United States Department of Labor Seventy-Fourth Annual Report Fiscal Year 1986

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William E. Brock, Secretary of Labor

United States Department of Labor

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Report of the Secretary

American workers continued to reap rewards from the Reagan economic expansion during the 1986 fiscal year. More Americans were working than ever before. Because inflation was kept in check, they could buy more with their earnings. Mortgage and other interest rates dropped significantly, stimulating the economy and allowing American workers to buy more homes and consumer goods.

Meanwhile, the Nation made further inroads against poverty, especially among blacks and older Americans, and the average worker had more take-home pay because of the Administration's tax reforms, moderately rising wage rates, and reduced inflation.

Against this background, we in the Department of Labor moved to improve further the situation of American workers and our delivery of services to them. In addition to a new management system which we initiated, we took a number of significant actions, and key administrators were named to carry out our goals. Each agency within the Department drew up supporting objectives to fine tune this system, and to reach out to special groups with special problems, such as the unemployed, minority and other youths, disabled veterans, single heads of households, and displaced homemakers.

I am proud of employees of the Department, who pitched in to make this management system work. Their commitment provided the margin of success for this system and for other actions we took during the year.

The three major goals we adopted for the Department for 1986 and the following two fiscal years under the management system were:

- To improve economic opportunities for America's workers by increasing job opportunities, health and safety in our workplaces, and retirement security.
- To enhance America's ability to compete successfully in world markets by promoting labor-management cooperation, improving education and training for workers, and adopting cost-effective regulations to protect them.
- To increase the productivity, effectiveness and creativity of the Labor Department's operations through more employee motivation and involve-

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ment, better coordination of activities within the Department, and more private sector support.

Our management system provided a plan for the next three years. But we realized that we had to look much further ahead. Major changes were already taking place in the world economy, in the American labor force, and in technology; and more radical changes lay ahead. We needed to know, among other factors, the kinds of occupations that would be in demand 10 or 15 years hence. We knew that, with the changes taking place and expected to continue through new technology, the average worker in the future was faced with a career consisting of a succession of widely differing jobs. The capacity to learn would be at a premium. This would require adaptability and a stronger educational base than most American workers now possess. Workers of the future would need better reading, mathematical and reasoning skills so that they could learn increasingly complex new jobs.

Work Force of the Future

To learn more about the scope of this problem and to provide possible solutions, we established a "Work Force in the Year 2000" project. This was a major research effort designed to achieve the following:

- Anticipate future employment needs of the Nation.
- Define and devise ways to meet these challenges and to take advantage of opportunities.
- Make positive plans for a skilled U. S. labor force that would be a critical factor in remaining competitive in the world economic market.

In this changing picture, one of the most serious problems was illiteracy. Tragically, 23 million Americans could not read a simple sentence. Yet by the year 2000, a sizeable proportion of the Nation's jobs will require education or technical training beyond high school. Because of the high correlation between illiteracy and unemployment, and because of the anticipated need for workers with a more solid basic education, we faced the possibility of a permanent underclass of unemployable, or marginally employable, men and women unless we took firm steps to meet this crisis. Because of this, and because of my personal interest over the years in combatting illiteracy, I was delighted to cooperate in Project Literacy U. S. (PLUS), a major undertaking by the American

Broadcasting Company and the Public Broadcasting Service. I met with leaders of this project and pledged the support of this Department. Because men and women who cannot read rely almost solely on radio and television for their information, this unique joining of forces between ABC and PBS promised success in reaching those who were illiterate and telling them about efforts to help them become literate. The first phase of PLUS, which ended in the closing days of the fiscal year, stressed reaching out to these people and to local groups being organized to deal with this problem. The second phase was to include documentaries on the two networks and other programs to heighten awareness among the public at large.

At the very end of the year, a Labor Department effort to obtain legislation mandating literacy training by Job Training Partnership Act (JPTA) sponsors passed Congress. Under the new JPTA provisions, State and local sponsors of job-training programs were required to provide more emphasis on literacy instruction and remedial education in the Summer Youth Employment and Training Program. They were also required to place increased emphasis on literacy and dropout prevention in year-round education programs for the disadvantaged.

One of the special problems of a changing, dynamic economy is plant closings which throw large numbers of men and women out of work. Many of these workers have little prospect of reemployment in their areas or in their former occupations. In October 1985, I appointed a 21-member Task Force on Economic Adjustment and Worker Dislocation, chaired by Malcolm R. Lovell, Jr., Director of George Washington University's Industrial Relations Institute and a former Under Secretary of Labor. I charged this task force with exploring the whole problem of plant closings, evaluating present programs, and suggesting alternatives. The task force was asked to report to me by the end of December 1986.

Meanwhile, we took further steps during the year to improve our services to youths and displaced workers. We began a new effort to coordinate JTPA resources at the local level with those of other Federal human resources programs. We started a program to decentralize and improve the integrity of the unemployment insurance system and to speed the transition to employment of unemployment insurance recipients, including the long-term unemployed. Also, at the fiscal year's end, we announced

four public meetings in different parts of the Nation to examine the role of the U. S. Employment Service and to obtain the public's response on possible changes to meet future labor market needs.

Faced with a persistent problem of unemployment among veterans, especially the disabled, we started a Jobs for Homeless Veterans demonstration project, which was scheduled to operate in 10 States during fiscal year 1987, and we established a National Veterans Training Institute to train State employment service personnel in meeting the special needs of veteran job applicants.

With growing numbers of women, including working mothers and displaced homemakers, in the labor force, we took special steps to help these workers. During the year, we continued to advocate options which include child-care programs, more flexible work schedules, flexible benefit packages, and other ways to meet the needs of working parents and their families. We also started programs to help teenagers, women veterans, and women seeking to move up the corporate ladder.

Understanding that the average worker of the future would be older than 1986's, we launched a new special-emphasis effort in the Department to help find long-term solutions to the problems of older Americans, whether still in the labor force or after they have left it. I named a special coordinator for seniors in the Department to explore the problem and to coordinate efforts of our various units, as well as those of outside groups.

Finally, in trying to cope with the work force of the future, we continued our efforts to increase cooperation, and lessen confrontation, between labor and management. At the same time, we tried to promote efforts to improve workers' job satisfaction and to increase worker participation in decisionmaking and solving workplace problems. During the year, we conducted or cosponsored 52 conferences or other meetings to further these cooperative goals. We also began a long-term inquiry into deterrents to cooperation between labor and management in existing laws and collective bargaining practices.

Safety and Health

To improve safety and health in American workplaces, we moved ahead on several fronts. We showed our determination to take meaningful action against employers whose

violations pose serious threats to large numbers of workers when we proposed penalties of nearly $1.4 million against Union Carbide Corporation for safety and health and recordkeeping violations at its Institute, WV, plant. Although this action attracted the most attention, many of the other actions during the year may prove more significant for the long-term health and safety of large numbers of American workers. These included:

- Ten major safety and health standard-setting actions, including a major hazard communication standard which set rules for informing workers about exposure to dangerous conditions in their workplaces while protecting industry trade secrets.
- Special-emphasis programs focusing major enforcement and training initiatives on industries and occupations presenting acute safety and health problems; these included the chemical and fireworks industries, hazardous-waste disposal sites, trenching and excavating in construction, and special efforts to enforce the hazard communication standard.
- A new program aimed at reducing back injuries, the single largest source of compensable injuries in the American workplace.
- To protect American miners and workers in related fields, we took a number of actions, including an accident reduction program in coal mines employing small numbers of miners. These mines had accounted for a disproportionate share of mining deaths. We also expanded our joint campaign with industry and labor to combat drug and alcohol abuse in the mining industry and mounted a special alert on the dangers of methane explosions in coal mines. During the fiscal year, civil penalties were assessed for more than 100,000 violations of mine safety and health standards.

Security in Retirement

In order to improve security in retirement for workers and their families covered by private sector pension plans, another of our major goals, we elevated the former Office of Pension and Welfare Benefits Programs to the sub-Cabinet level. An assistant secretary was appointed by the President to head the new Pension and Welfare Benefits Administration. Enforcement activities under the Employee

Retirement Income Security Act (ERISA), which also covers private sector employee benefit plans, were streamlined, and better coordination was achieved between this Department and other Federal agencies having jurisdiction under ERISA.

During the year, we recovered more than $100 million for workers, retired persons and their beneficiaries through ERISA court actions and voluntary settlements, and we conducted 47 separate criminal investigations under this law. A bipartisan task force was created and made recommendations on curtailment of plan terminations in cases where excess assets are taken over by a plan's sponsors rather than distributing them to beneficiaries.

Fair Labor Standards

An important achievement affecting employees of State and local governments was passage in November 1985 of legislation sought by this Department to ease the impact of the U. S. Supreme Court's ruling in *Garcia vs. San Antonio Metropolitan Transit Authority*. This ruling, which held that State and local governments were subject to the overtime pay requirements of the Fair Labor Standards Act, had placed a large burden on the shoulders of public employees, their employers and the taxpaying public. Employees faced the loss of hard-won concessions from their public employers, including the right to accrue compensatory leave instead of receiving overtime pay. The law we sought, and which Congress passed and the President signed, eased these burdens and allowed employees to take advantage of compensatory time off.

During the year, we continued our efforts to prevent fraud, waste and abuse in our own programs and in those funded by the Department, and to improve the economy and efficiency of these operations. Ending corruption in pension and welfare benefit plans continued to have the highest priority as the Inspector General's Office of Labor Racketeering obtained 114 indictments, an increase of 25 over the previous year.

In the management of Department activities, we continued efforts to provide better services at lower costs. Specific efficiency improvements were achieved in a number of areas, including auditing of leave, processing of travel vouchers, small purchases, space utilization, and computer services.

Looking to the future, we began to plan for the 75th anniversary of this Department, which will take place in 1988. We hope to present a number of programs which will highlight to the public the role of American workers in our society over the years, and the role of government and the private sector in providing for their protection and improving their well-being.

We view this past year as one of solid achievement, building for the future and moving forward to provide better services for American workers and their employers.

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Employment and Training Administration

The Job Training Partnership Act (JTPA), centerpiece of the Reagan Administration's employment and training policy, completed its second full year of operation on June 30, 1986, the end of Program Year 1985. During this period the Employment and Training Administration (ETA) emphasized improving JTPA's effectiveness in serving youth, particularly in terms of raising literacy levels, and displaced workers. ETA also began a new effort to coordinate JTPA resources at the local level with those of other Federal human resources programs.

To prepare for the vast changes that will take place in the labor force and labor market from now through the 1990s, ETA launched a wide-ranging study of the world of work as it will be in the year 2000. Information generated by "Work Force 2000" is expected to stimulate public awareness and debate, particularly at the local level, and aid local communities in anticipating future employment needs. The skills and talents of the entire work force must be developed if the U.S. is to regain its international competitiveness.

ETA moved in new directions with respect to the unemployment insurance program. The major emphasis was on decentralizing the day-to-day administration of the UI program to the States, improving the integrity of the program, and accelerating and smoothing the transition to reemployment for UI recipients, especially for the long-term unemployed workers.

Job Training Partnership Act

A total of 1,067,956 participants were enrolled in Job Training Partnership Act (JTPA) Title II-A programs during Program Year 1985 (July 1985–June 1986). Youth accounted for 44 percent of the total.

Title II-A provides for a system of block grants to the States to support local training and employment programs for youth and adults. States are responsible for further allocating funds to Service Delivery Areas (SDAs) and for overseeing the planning and operating of local programs.

About 93 percent of the participants were economically disadvantaged, and females and minorities accounted for 52 and 49 percent of participants, respectively. Fifty-seven percent were high school graduates, and 26 percent drop-outs. About 72 percent of the participants received major services involving classroom training, on-the-job training, and job search assistance. A small proportion was provided work experience and other services.

Of the 793,794 participants who left the program, about 60 percent entered employment at an average hourly wage of $4.63. Youth had a positive termination rate of about 65 percent. Title II-A funding totaled $1.9 billion for PY 1985.

Summer Youth Programs. Summer Youth Employment and Training Programs under Title II-B of JTPA provide economically disadvantaged youth with job opportunities, training, and educational services during the summer months. Service Delivery Areas (SDAs) received a total of $781.5 million for the 1985 summer program which served approximately 788,000 youth.

Beginning with the summer 1986 program, the Department initiated an effort to encourage the States and summer program operators to implement a remedial education and vocational exploration program for participants. The initiative addresses the problem of illiteracy that affects high-risk youth, and provides them the basic skills for performing regular academic work during the school year.

The summer program model is designed to combine work experience with remedial education and/or vocational exploration and involves the assessment of the literacy levels of participants to determine if these youth meet locally determined educational standards. Youth who fall below these standards are enrolled in a remedial education component as part of the summer program; those youth who meet the educational standards can be enrolled in vocational exploration activities.

Dislocated Worker Program. Funding for Title III activities during program year 1985 totaled $222.5 million. Of this amount, $167.25 million was allocated directly to the States, and $55.25 million was reserved for use by the Secretary.

During PY 1985, a total of 90 projects in 39 different States were funded from the Secretary's reserve account. The majority of these projects were directed toward

specific groups of dislocated workers, usually those affected by one or more plant closings. Projects assisting workers from agriculture, timber and wood products, coal mining, rubber and tires, electronics, communications equipment, steel, heavy equipment, automobiles, shipbuilding, and aerospace were among those funded during PY 1985. During the past 2 program years, the Secretary of Labor has also set aside a total of $20 million from the national reserve account to support projects aimed at dislocated workers from the copper, steel, and footwear industries.

Enrollments under Title III during PY 1985 totaled 208,061. Of the 132,239 participants who terminated from the program, 69 percent entered employment.

In cooperation with the Bureau of Labor-Management Relations and Cooperative Programs and with the National Governors' Association, ETA introduced State officials to a Canadian method of responding to worker dislocations. The "Canadian model" places more emphasis on early intervention, labor-management cooperation, and employee and corporate involvement in placing workers than do most State systems in the United States. In addition, most programs in Canada concentrate on direct placement, without providing skills training. Representatives from 35 States attended conferences in PY 1985 to learn how the Canadian model works. Six of these States were chosen to run pilot projects testing the feasibility of applying the Canadian approach in the U.S.

Special Targeted Programs. Under Title IV of JTPA, the Indian and Native American Employment and Training Program continued in PY 1985 to support a wide variety of services through grants to Indian tribes, other Native American communities, and various related organizations. Many grantees developed initiatives in support of the Secretary's goals for the Department.

These included: (1) enhancing the literacy skills of Indian youth, recognizing the fact that successful job training and placement are dependent upon adequate reading and writing skills, (2) increasing efforts to use other funding sources, particularly in the education area, to help defray the costs associated with classroom training, such as Pell grants, student loan programs, and special Indian education grants available in some States, and (3) working more closely with the private sector to custom-tailor training activities to the jobs available.

During PY 1985, approximately 26,500 Indians and Native Americans were served at a cost to $62.2 million. In terms of services, 30 percent received classroom training, 10 percent received on-the-job training, 25 percent were in work experience, 4 percent were in community service employment, and 31 percent received various supportive services. The Department requested Native American grantees to emphasize services to youth during the program year.

Initiatives launched under the Migrant and Seasonal Farmworker (MSFW) Program during PY 1985 to meet the Secretary's goals for the Department and to strengthen services to youth included the development of: (1) partnerships between farmworker program operators and private industry which lead to the evolution of customized job training and (2) linkages between grantees and labor union locals to utilize apprenticeship training programs. The MSFW program is authorized under JTPA Title IV.

Two grantees were accredited as educational training institutes by the Council for Noncollegiate Continuing Education in PY 1985. In the continuing effort to coordinate with other human resources programs to maximize outcomes, grantees were instructed to refer eligible farmworker youth to Job Corps centers. Youth employability enhancement activities were also a feature of PY 1985 programs in which 9,484 farmworker youths aged 14–21 (19 percent of the total) participated.

During PY 1985, the overall program served 50,055 persons at a cost of $64.1 million. More than 11,000 participants received classroom training; 7,300 were placed in on-the-job training, and 2,000 were placed in work experience positions.

Job Corps. During program year 1985, the Job Corps operated 106 training centers at a cost of $627 million, providing a wide range of training, education, and support services, primarily in residential centers, for disadvantaged youth aged 16 to 21. Job Corps is authorized by Title IV of JTPA.

Job Corps centers provided 38,300 service years and served approximately 63,000 new enrollees during PY 1985. The majority of Job Corps centers continued to be 100 percent residential; 44 centers operated combined residential/nonresidential programs. Nonresidential enrollment was 9.9 percent during the program year.

During this period, plans were developed to implement innovative pilot, demonstration, and linkage projects which would build on the past success of the Job Corps and make the program even more effective. Projects selected for pilot testing included establishment of nonresidential Job Corps centers, designation of a center to operate through a public/private sector partnership, provision of child care services to corpsmembers, and development of local linkages with other JTPA programs for recruitment, placement, and training.

These projects will be evaluated for their overall impact on performance and costs. Successful approaches will provide the basis for Job Corps II and be replicated at additional centers.

Programmatic initiatives during PY 1985 included the continuation of pilot projects to serve 22- to 24-year-olds, and to test computer-assisted instruction. Both of these projects will be evaluated during program year 1986. In addition, designated center facilities were rehabilitated and equipped to accommodate handicapped enrollees.

Older Worker Program

In PY 1985 the Senior Community Service Employment Program (SCSEP) provided employment for over 63,000 older persons with an appropriation of $326 million.

During the year, a number of initiatives were undertaken to respond to the Secretary's goals for the Department and to enhance the effectiveness of the program. These included an increased emphasis on coordinating SCSEP activities with other employment programs. Of particular importance was the development of closer linkages with sponsors of JTPA's 3 percent set-aside for older workers and with the Job Corps. Efforts were also initiated to strengthen interagency activity for older workers. An example is the development of a closer and more productive relationship with the Administration on Aging of the U.S. Department of Health and Human Services.

Apprenticeship

During Fiscal Year 1986, more than 317,000 apprentices received training, and more than 94,000 new apprentices entered training. Female apprentices accounted for 7 percent of the total, and 18 percent were members of

minority groups. For several years, ETA has made special efforts, in cooperation with the Defense Department, to develop and expand apprenticeship in the Armed Services. In Fiscal Year 1986, approximately 43,000 uniformed personnel were enrolled in apprenticeship programs conducted by the Army, Navy, and Marine Corps. The Defense Department also sponsors apprenticeship programs for its civilian employees.

During the year, there were over 46,000 apprenticeship programs registered with ETA or the 31 State apprenticeship agencies, including more than 2,700 new programs developed during the year. Federal staff conducted 1,600 reviews of apprenticeship programs to assure compliance with the provisions of equal employment opportunity in apprenticeship regulations.

Early in fiscal year 1986 and in accordance with the Carl D. Perkins Vocational Education Act, the Departments of Labor and Education developed an interagency agreement and implementation plan to promote greater coordination between vocational education and apprenticeship training programs. Pursuant to this agreement and plan, a National Coordinating Steering Committee was established and a joint letter was sent by the Secretaries of Labor and Education to all Governors encouraging them to create State Apprenticeship/Vocational Education Coordinating Steering Committees to foster cooperative efforts. Development of a technical assistance guide for promoting apprenticeship/vocational education cooperation was also initiated.

Employment Service

During program year 1985, 19.9 million persons registered with the public employment service; 8.3 million received some job-related services and 3.8 million were either placed in jobs or obtained one after receiving some services. Labor exchange expenditures for these quarters were approximately $740 million.

Work continued on updating the *Dictionary of Occupational Titles* (DOT), a basic reference for many employers, schools, and other personnel-related activities. Emphasis is on identifying, analyzing, and defining new and emerging occupations and verifying information currently in the DOT. The DOT second supplement, which contains 840 additional occupations, was published during the year.

The public employment service continued to assist in the administration of the Targeted Jobs Tax Credit (TJTC) program, as authorized by the Deficit Reduction Act of 1984. The program is intended to facilitate employment and job experience for those who traditionally find it difficult to obtain and retain suitable jobs (e.g., disadvantaged youth, handicapped, ex-offenders, etc.).

During the first quarter of fiscal year 1986, 293,659 persons were issued vouchers identifying them as members of a TJTC target group, and more than 148,203 certifications were issued. The TJTC program expired on December 31, 1985. The Tax Reform Act of 1986 reauthorized the program for 3 years, retroactive to January 1, 1986.

The U.S. Employment Service and its affiliate State agencies administer a labor certification program under which approximately 34,000 applications for permanent and temporary labor certifications were processed in FY 1985, with 27,000 applications certified for approval. In calendar year 1985, approximately 21,000 applications for jobs in temporary agricultural work, to be filled by foreign workers, were certified.

During the year, the Employers' National Job Service Committee (ENJSC) provided guidance and leadership to about 1,200 local Job Service Employer Committees involving over 30,000 employers from all types and sizes of firms, as well as 38 State and 9 DOL regional committees.

JTPA authorizes a nationwide computerized job bank program, and the Interstate Job Bank computer tape-to-tape exchange of job openings information has grown rapidly to include approximately 10,000 openings each week, with a weekly turnover of about 10 percent. The listed openings, submitted by States because they are hard-to-fill locally, are forwarded to more than 20,000 locations each week for reference and applicant referral. During PY 1985, some 65,000 new jobs were distributed, about half of which were professional and managerial occupations. About 11,000 applicants were referred to these jobs.

Work Incentive Program

In fiscal 1986, the budget for the Work Incentive (WIN) program totalled $210.5 million. WIN's objective is to restore AFDC (Aid to Families with Dependent Children) applicants and recipients and their families to economic

independence and enable them to assume a useful role in the community. Approaches used by States to achieve this include job search, work experience, on-the-job training, vocational and other classroom instructions, and supportive services.

Regular WIN programs are jointly administered by the Department of Labor, through ETA, and by the Department of Health and Human Services (HHS), through the Family Support Administration (FSA). At the State level, regular WIN programs are managed jointly by the State employment service and the State welfare agency. States may also choose to conduct a WIN demonstration program which is administered solely by HHS' Office of Family Assistance and the State welfare agency.

In FY 1986, 26 States operated demonstration programs, while 28 States (including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands) continued to operate regular WIN programs.

The WIN population differs substantially from the mainstream work force. In the WIN client group, 79 percent are women, 54 percent are minorities, and slightly more than half have less than 12 years of school.

It is estimated that 1.5 million individuals were registered in WIN in FY 1986, through both regular and demonstration programs. Of these, an estimated 343,000 found unsubsidized jobs and 162,000 earned enough to be removed from welfare.

Unemployment Compensation

During calendar year 1985, 20.6 million initial claims for unemployment benefits were filed with State Employment Security Agencies (SESA's). There were 109.8 million weeks compensated for total unemployment and 9.7 million weeks compensated for partial unemployment in calendar year 1985.

Regular unemployment (UI) benefits are payable for up to 26 weeks in most States. Extended benefits (EB) are payable in individual States when periods of high unemployment in the State trigger EB payments, increasing a claimant's benefit entitlement by half the individual's regular benefit entitlement, up to a total maximum of 39 weeks. In FY 1986, extended benefits were paid by four States.

Improvement was reflected during FY 1986 in State benefit financing and repayment of loans from the Federal Unemployment Trust Fund. These loans had peaked as of March 31, 1984, when 26 States had outstanding loans totaling $14 billion. During FY 1986, stable rates of insured unemployment and improved financing structures combined to permit many States to continue making voluntary loan repayments, in lieu of or in addition to recoveries occurring by way of reduced Federal unemployment tax offset credit to employers in debtor States. As of July 31, 1986, the number of States with unpaid loans stood at 13. The balance of outstanding loans had been reduced to $4.8 billion ($3.7 billion interest free and $1.1 billion interest bearing).

Monthly borrowings during FY 1986 ranged from a high of $495.5 million in March to a low of $58.5 million in May. Trust fund balances of the 40 States not in debtor status as of June 30, 1986, amounted to $17.3 billion.

ETA moved in several new directions with respect to the UI program and policy during FY 1986. The major emphasis has been to decentralize the day-to-day administration of the program to the States while proceeding with two major policy initiatives: (1) improving the integrity of the UI program, and (2) accelerating and smoothing the transition to reemployment for UI recipients, especially for the long-term unemployed workers.

In December 1985, the Department launched a major effort to improve the adequacy and equity of the financing of the SESA administration. Under the existing system, appropriations from FUTA tax receipts are allocated by ETA to the SESAs through grants, based on measured productivity factors, estimated workloads, and other formulas, thus determining not only the level of resources available to a State, but also the priorities that the States must assign to the various administrative activities.

Based on broad public input in response to solicitations for comments, the Department announced its decision in May 1986 to adopt four short-term revisions to the administrative financing process: (1) replace quarterly recapture of unused base grant funds with annual recapture only; (2) substantially reduce fiscal reporting as rapidly as possible; (3) eliminate detailed Federal monitoring of State financial administration of the UI programs, and (4) consolidate contingency categories and contingency overhead funding. These changes allow states more flexibil-

ity and bottom-line authority in managing their resources, provide productivity incentives, and reduce Federal monitoring. Work is continuing on determining the appropriate long-term changes.

During fiscal year 1986, ETA continued its emphasis on developing and implementing a comprehensive, integrated approach to improve the accuracy and timeliness of UI program activities, including the collection of UI revenues and the payment of UI benefits. The principal component of this effort is the UI Quality Control system (QC).

States also continued to direct attention to ongoing program integrity activities and techniques to identify and eliminate problems before they occur. By the end of the fiscal year, 30 States had installed the Model Crossmatch System and 34 States were operating the Model Recovery System, which have been developed to better identify potential fraud cases and increase the amount of overpayments collected. More than $280 million in overpayments were established and more than $135 million recovered during the fiscal year.

In July 1985, prior to implementing the proposed QC program design, the Secretary initiated a comprehensive review of the QC program and sought public comments on its major features. As a result of consultations with all interested parties, the Secretary announced a series of modifications to the QC program and affirmed the Department's intent to continue to consult with interested parties as the program evolved.

In April 1986, States commenced voluntary implementation of the QC program to test the operation of the system prior to final clearance of the revised QC program design by the Office of Management and Budget (OMB). All SESAs had voluntarily implemented the program prior to the June 1986 official OMB approval.

Under the uniform QC program, each SESA is sampling its claimant file to identify problem areas, analyzing the problems, and acting on the findings. At the same time, efforts have begun to expand QC to other UI program areas such as benefit denials and revenue collections. QC in these areas will provide the SESAs with a comprehensive tool to better ensure that the UI program is operating effectively and efficiently.

One of the priority goals of the Department and ETA for fiscal year 1986 and beyond is to improve the ability of

displaced workers to adjust more rapidly and effectively to the changing demands of the labor market and in smoothing the transition of UI claimants in their return to suitable work. An internal ETA work group was established to examine the relationships and improve the coordination between local JTPA, employment service, trade adjustment assistance, and UI programs and activities in order to facilitate the return of UI claimants to work.

In addition, a special project grant was allocated to the State of New Jersey for a comprehensive test of several forms of reemployment assistance that are not currently available to UI claimants. The $5.2 million demonstration is looking at ways to speed the return to work of unemployed individuals who appear likely to exhaust their UI benefits and who may have difficulty finding new work.

Trade Adjustment Assistance

Statutory authority for the trade adjustment assistance (TAA) provisions of the Trade Act of 1974 expired on September 30, 1985. A series of emergency extension acts continued the TAA program to December 19, 1985. On that date P.L 99-199, the third continuing resolution, provided funding for Sections 236, 237, and 238 of the Trade Act, which includes training, job search allowances, and relocation allowances for workers adversely affected by imports, through September 30, 1986.

On April 7, 1986, P.L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985, amended the Trade Act by extending TAA for workers for six years to September 30, 1991. It also restored trade readjustment allowance (TRA) payments retroactive to December 18, 1985, required eligible TRA recipients to participate in a job search program, and made other changes to the adjustment assistance program.

A total of 1,752 worker TAA petitions were filed with the Department during fiscal 1986, a 71 percent increase over the number received the previous fiscal year. Some 93,130 workers were certified as eligible to apply for TAA benefits and reemployment services compared with about 25,400 workers in the prior year. Many of these workers were separated from employment in firms manufacturing apparel, electronics, footwear, and steel products.

TAA data for the first 8 months of fiscal 1986 show that 27,545 workers received TRA payments totaling $62.2 million. In addition, 719 workers received job search allowances totaling $161,294, and 1,599 workers received relocation allowances totaling $1.1 million. The number of workers entering training programs totaled 5,393.

Policy And Planning

Policy and planning activities focused primarily on three issues in fiscal 1986: Work Force 2000, coordination of Federal human resources services, and creating a literate work force. Continuing responsibilities included support for ETA's legislative agenda and for the Secretary's management system.

Work Force 2000 is an effort to identify and analyze demographic and economic trends in employment through the end of the century. It is also a vehicle to raise public awareness and stimulate debate and action with respect to identified labor force and labor market trends. The mismatches between projected workplace needs and work force capabilities represent both challenges and opportunities. Policy papers were developed and national leadership meetings were held on Work Force 2000.

Through ETA's initiative, DOL took a leadership role in demonstrating how coordination of services and cooperation between Federal and local agencies can produce more cost-efficient and more successful outcomes for persons receiving human resources services. DOL, in cooperation with the Departments of Education and Health and Human Services and with other Federal agencies, embarked on large-scale cooperative ventures, involving jointly funded and managed pilot and demonstration programs. These projects link services to teen parents, dropouts, the handicapped, and other groups at all levels and thus increase the effectiveness of the assistance provided through individual programs.

A major Administration goal, the reduction of illiteracy, has become a primary focus for ETA and was the subject of a special effort of the policy and planning group. Among other things, this effort consisted of jointly funded projects, under the coordination initiative, that encourage literacy; development of a legislative proposal to include literacy training in JTPA's summer youth programs; a series of policy papers examining various aspects

of illiteracy prevention and remediation, and cooperation with the American Broadcasting Companies, Inc., (ABC) and the Public Broadcasting Service (PBS) in the development of PLUS (Project Literacy U.S.). PLUS consisted of a series of national network broadcasts and community activities to raise public awareness and generate ways of dealing with the problem of illiteracy on the local level.

ETA participated in congressional oversight hearings on a number of issues: JTPA, Job Corps, trade adjustment assistance, immigration, veterans' employment and training, America's changing demographic profile, and the Education and Training Partnership, a proposed new agency to coordinate activities under JTPA, the Wagner-Peyser Act, and the Carl Perkins Vocational Education Act. ETA also prepared the Department's position on numerous legislative proposals including Job Corps and JTPA (the 1986 amendments).

Planning and policy staff developed ETA's supporting goals as part of the Secretary's management system, instituted a tracking system to assure achievement of the Secretary's goals, and prepared the annual Training and Employment Report of the Secretary for submission to Congress.

Research And Evaluation

ETA continued to conduct studies which provided the basis for briefs and reports in accordance with DOL's oversight responsibilities. The final phases of multiphase studies on JTPA implementation and the effects of the JTPA Wagner-Peyser amendments were completed. Reports of both studies indicated that JTPA is evolving as anticipated by the legislation.

Data from the Job Training Longitudinal Survey (JTLS), the primary mechanism for gathering data on the characteristics of JTPA participants, showed that JTPA continues to serve the intended clientele (over 90 percent of the Title II-A participants are disadvantaged) with the intended service (training). In addition, ETA began the development of a group of field experiments to measure the impacts of JTPA II-A programs on participants' postprogram labor market experience.

ETA continued to focus efforts on the problems of youth. Cities in Schools projects were established through joint funding with the Departments of Justice, Education,

and Health and Human Services to combat the high dropout and crime rates among inner-city youth. JTPA funds provide basic education and other employability services.

Similarly, the Summer Training and Education Program (STEP), which completed the second year of a 3-year program, continued to combine part-time employment with competency-based remedial education and "life skills classes." JOBSTART also provided remedial education, skills training, and other assistance to school dropouts. A key feature of the STEP and JOBSTART programs is significant funding from private foundations. Business is involved in Cities in Schools projects through private industry councils (PICs).

Other nationally administered pilot, demonstration, and multi-State programs provided training and other employment-related services to special-needs groups, such as the handicapped, youth, displaced homemakers, single parents, older workers, and persons of limited English-speaking ability.

Performance Standards Management

The issuance of an updated performance standards adjustment model for adult and youth programs and the development and approval of postprogram data collection were important program year 1985 activities.

Performance measures for JTPA Titles II and III, Job Corps, and programs serving Indians and farmworkers remained unchanged. There was emphasis on refining and updating Title II adjustment models to assist States in setting local standards. Work continued on developing adjustment models for Indian, farmworker, and Job Corps programs measures.

ETA provided ongoing assistance through various technical assistance guides and customized training for State and local staff operating Title II programs.

Specific accomplishments in PY 1985 included:

- Issuance of an updated optional methodology to assist Governors in adjusting local standards for PY 1986;
- Continued development of adjustment models for Job Corps center standards;
- Development and issuance of guides for youth employment competency systems, welfare reduction

measures and data collection, and postprogram data collection methods to implement the new Federal reporting requirements, and

- Training conferences for more than 800 JTPA representatives on PY 1986 standard-setting methodology, and new youth welfare and postprogram initiatives.

Federal Oversight

In PY 1985, ETA conducted approximately 600 reviews in the 57 JTPA recipient entities and made about 75 follow-up visits to assure that appropriate actions were taken to correct identified problems.

The ETA regional offices have the primary responsibility for direct Federal oversight of the JTPA programs operated by the States. To determine State compliance with statutory and regulatory requirements, ETA conducts onsite compliance reviews covering critical areas in each state.

Reviews are focused on systems, policies, and procedures established at the State level. Where reviews indicate problems involving a failure to conform to Federal requirements, ETA informs the State of these findings and alerts the State that corrective actions should be implemented to correct deficiencies. Other findings are provided to the State on an advisory basis.

While compliance reviews are conducted at the State level, sub-State visits to SDAs are made on a sample basis to verify that States have communicated policies and procedures to the operator level and that operator activities are being monitored by the State.

Other oversight activities included special studies and evaluations required by Section 454 of JTPA.

For PY 1986, ETA plans to move to a more proactive oversight role. (See section on Financial Management).

Financial Management

Although the virtual closeout of the Comprehensive Employment and Training Act (CETA) reduced the number of incoming audits, ETA issued final determinations for 369 audits during program year 1985. Included in this amount were nine final determinations resulting from audits of the Federal share of unemployment compensation programs

initiated by the Department's Office of the Inspector General (OIG). ETA is responsible for issuing final determinations on all of these audits after consultation with the OIG.

During program year 1985, 467 contracts and grants funded by the national office were closed. Nearly 430 actions remained pending for reasons such as appeals of contract or grant officer determinations, unresolved audit issues, pending debt collection actions, and pending requests for the establishment of an indirect rate.

An important new development was the creation of a new proactive partnership role for ETA under JTPA. Three major components are included in this new partnership: a policy guidance system will advise States as to the legalities and acceptability of proposed policy decisions; a management review and consultant system will identify problem areas and assist States in developing and implementing improvements, including providing any needed technical assistance; and the compliance review system will be restructured to reduce the number of onsite visits to States and State agencies. This will be accomplished by eliminating and combining review guides and coordinating visits.

ETA collected approximately $13 million of the debt established through the audit resolution process in PY 1985. Approximately $11 million of this amount consisted of cash collections. Also, more than $12 million of debt was referred to the Department of Justice for litigation or other debt collection followup. In addition, ETA began a comprehensive review of accounts receivable resulting from CETA audits and contract and grant closings for purposes of developing settlement options for all remaining CETA debt cases.

During the same period, 21 internal control reviews, surveys, and management reviews were conducted in the process of carrying out ETA's responsibilities under the Federal Managers' Financial Integrity Act. Nearly 600 preaward reviews were completed on potential ETA contractors or grantees. Thirty-two onsite investigations were conducted to determine whether the grantees or contractors were in compliance with the legislative and regulatory requirements applicable to them.

A total of 568 incidents of alleged fraud, abuse, or other criminal activity were reported through the ETA Incident Report system or the General Accounting Of-

fice/Office of Inspector General Hotline system. Corrective action was initiated where appropriate.

In an effort to strengthen the integrity of ETA programs, onsite reviews were conducted independent of program office activities on a sample of 24 national office programs. These reviews focused on program operations and financial systems. The primary issues identified were misclassification of costs, lack of cost allocation plans, inadequate documentation for verification of participant eligibility, and failure to follow government travel regulations. The appropriate program office initiated requests for corrective action where necessary.

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Bureau of Labor Statistics

In 1986, the Bureau of Labor Statistics continued to produce and maintain the quality of the national economic indicators and other essential statistical programs in the areas of employment, unemployment, prices, wages, productivity, economic growth, and safety and health.

Among the major developments was an acceleration of work in the Consumer Price Index program as the deadline for publishing a revised CPI approached. An intensive effort focused on completing the required computer systems to process and publish the revised index beginning with data for January 1987.

The revised CPI introduces updated market baskets that reflect population and spending patterns from the 1982–84 Consumer Expenditure Surveys, introduces previously unpriced products, and reduces detail for expenditure categories with declining relative importance.

Another revision program, that of the Producer Price Index, marked a major milestone in 1986 with completion of new or revised indexes for all industries in the mining and manufacturing sectors of the economy. Completion of this work concludes the first comprehensive overhaul of index methods since the origin of the index at the turn of the century.

Fiscal year 1986 saw the culmination of several years of effort to revise and reissue guidelines for employers who record occupational injuries and illnesses. The new guidelines are part of the Bureau's ongoing work to improve the Nation's work injury and illness statistics.

Other developments during the year included the following:

- Multifactor productivity. The Bureau reviewed preliminary measures for all 2-digit manufacturing industries.
- Service sector initiatives. The Bureau published a Producer Price Index for the oil pipeline industry and an import price index for electricity. The Bureau also published Employment Cost Indexes for 8 additional service sector industries and for the goods-producing and service-producing sectors at the aggregate level. The Bureau issued six industry labor productivity measures and continued develop-

mental work on price, productivity, and wage measures.

- Average hourly earnings. The Bureau introduced a new series that includes lump-sum payments in the aerospace industry. The Bureau also reinstated the suspended series that excludes such payments. These series, used by the aerospace industry to escalate contract sales of equipment, had been the subject of controversy since the employer practice of substituting lump-sum payments for wage increases began a few years ago.
- The Current Population Survey. In a joint effort with the Bureau of the Census, BLS examined all aspects of this program. The review of data collection methods gave particular attention to the possible use of computer-assisted telephone interviewing. Further research is planned for 1987.
- Permanent Mass Layoff and Plant Closing study. Four more States signed developmental agreements with the Bureau and 13 States submitted test data during the year.
- Consumer Expenditure Survey. A new weighting scheme was introduced to improve the population estimates from the Diary and Interview samples.

Employment and Unemployment Statistics

The Bureau continued to meet the labor force data needs of the press, business, academia, Congress, and government agencies. Analyses included the regular monthly summaries of employment, and quarterly reports on women, families, weekly earnings, and minorities.

Special analytical projects on employment by industry, part-time workers, and earnings resulted in articles published in the *Monthly Labor Review*. In addition, BLS produced major studies on the following subjects: "Rural America in the Mid-1980's," for the Joint Economic Committee; "Employment Conditions Among Black Americans" and "Families at Work" for the Department of Labor; and "Changes in the Labor Force, Employment, and Unemployment: Implications for the Low-Income Population" for the White House.

Data from the recurring October and March supplements and from two other supplements to the Current Population Survey were analyzed and made available to

the public. These included a first-time supplement on disabled Vietnam-era veterans (April 1985) and one on the work patterns and preferences of workers (May 1985). Several articles on topics such as flexitime, absences, and moonlighting were prepared for the *Monthly Labor Review*. In addition, data on women veterans were introduced.

Research activities on displaced workers continued and included: Providing support for the Secretary's Task Force on Economic Adjustment and Worker Dislocation, a research summary based on matched 1984 and 1985 data, and analysis of data from the January 1986 supplement on displaced workers.

Research on the use of computer-assisted telephone data collection in the Current Employment Statistics survey continued to yield impressive results which could lead to improvements in timeliness and data quality. Large-scale tests leading to implementation are planned for fiscal years 1987 and 1988. Research also focused on identifying new businesses more quickly to improve data quality.

The Bureau completed the third year of cooperative agreements for its labor market statistical programs with 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. Cooperative agreements for fiscal year 1987 were developed for these areas and also for American Samoa, Guam, and the Northern Mariana Islands.

In addition to its technical responsibility, the Bureau assumed financial responsibility for the Covered Employment and Wages program (ES-202), previously under the jurisdiction of the Employment and Training Administration. Emphasis was placed on the collection, analysis, and use of cost, productivity, and performance data to improve program management. Activities in this program continued to focus on improving both the quality and timeliness of the data. Installation of a system which edits data at the macro level was completed in the majority of States. The redesign of the existing exportable State microdata processing system was begun. This system will enable the States to meet program standards and to increase the efficiency of their operations.

The 1984 *Employment and Wages* bulletin and annual reports on average pay and employment change by State were issued earlier than in previous years. This earlier release of data is attributed to previously implemented initiatives to improve State operations.

Standard Industrial Classification refiling of industries was completed in the majority of those States which had fallen behind in their refiling activities. An exportable system was developed which will enable States to monitor their review of SIC refiling work more efficiently. BLS staff continued to devote considerable time to the interagency effort, headed by the Office of Management and Budget, to update the SIC codes to reflect the changing composition of American industry. The publication of the new SIC codes in fiscal year 1987 will mark the first significant revision of the industrial classification system in 15 years.

The Occupational Employment Statistics program developed for States' use an exportable software package which will prevent any inadvertent disclosure of data relating to a single employer.

Significant strides were made during the year in developing the Permanent Mass Layoff and Plant Closing program. Four States signed developmental agreements with the Bureau, bringing total participation to 44 States and the District of Columbia. During 1986, 13 States completed developmental work and submitted test data for review of quality and adherence to program specifications and guidelines. By the end of fiscal 1987, all currently participating States are to submit either test or ongoing program data. In addition to these activities, the Bureau initiated a special study of layoff actions to identify the extent of advance notice of layoffs and the availability of out-placement services to affected workers. Completion of the study and analyses of the results are expected early in fiscal 1987.

Prices and Living Conditions

The level of activity in the Consumer Price Index program accelerated to meet the objective of publishing a revised CPI for January 1987. Data collection from more than 60,000 housing units was initiated for the new shelter survey, increasing the number of housing quotes threefold. Price collection for commodities and services was begun in the 20 new geographic areas to be included in the revised CPI. This, along with the new procedures for the revised index, required an extensive new training program in data collection in all areas. Finally, an intensive effort focused on completing the computer systems necessary to process

and publish a revised index. As with revisions of all major programs, the period immediately preceding the release of a revised CPI was one of intense activity which required the coordinated efforts of economists, statisticians, computer systems analysts, and regional staff in the 91 geographic areas in which data are collected.

The 1987 CPI revision continues the improved method for estimating homeowner shelter costs, called rental equivalence, adopted in 1983.

The new index features a sample design that produces the most accurate national CPI possible but reduces the frequency of publication from bimonthly to semiannual average indexes for some areas.

Both the CPI for All Urban Consumers and the CPI for Urban Wage Earners and Clerical Workers for January 1987 are linked to the previous series of each index as of December 1986 to provide a continuous series. As in the past, BLS is continuing to publish selected indexes using the old expenditure weights for 6 months after the issuance of the revised CPI.

The Producer Price Index program marked a major milestone—the publication of new or revised indexes for all of the industries in the mining and manufacturing sectors of the economy. The program also began publishing a new stage of processing series in 1986, which is industry-based and includes greater detail—primary manufacturing—for the intermediate stage.

In addition to its regular publication of annual estimates of consumer expenditures and income, the Consumer Expenditure Survey program developed a new weighting scheme to improve the estimates derived from the program's two samples—one for the Diary Survey and one for the Quarterly Interview Survey. This weighting scheme was the subject of professional review at a conference sponsored by the Bureau of Labor Statistics in March. Papers from this conference were published in a compendium titled *Population Controls in Weighting Sample Units*. The CES program also changed its geographic sample this year, collecting data in the same 91 areas as the CPI, plus 17 rural areas.

Under the initiative to develop indexes for the service sector of the economy, the Bureau developed new indexes for both the producer price and international price programs—a PPI output index for the oil pipelines industry and an international import price index for electricity.

Wages and Industrial Relations

The use of the Employment Cost Index by both the public and private sectors continued to increase during 1986. The expanded use of the ECI by the Department of Health and Human Services in determining Federal payments for Medicare was the most important of the new applications. A major aerospace company requested permission from the Department of Defense to use the ECI, rather than the Average Hourly Earnings index, to escalate prices in contracts with the Department. Also, during the year, the Bureau estimated preliminary cost levels from the ECI data for use by the Employment Standards Administration in pay determination under the Service Contract Act.

A complete review of the operational and conceptual treatment of benefits was finished. This review will become part of the broader analysis of concepts being carried out by the Office of Research and Evaluation on wage and benefit cost measurement. The recommendations of the review will be incorporated into the index as time and resources permit.

The service sector expansion, begun in 1985, hit full stride. In addition to the indexes for individual service-sector industries which were the primary goal, the expansion allowed a number of other indexes to be published. These included separate indexes for the goods- and service-producing sectors. Within each sector, indexes for both union and nonunion workers were published. Also published were indexes for all workers excluding sales workers and for white-collar workers less sales workers. Finally, indexes of compensation were issued for all occupational groups for which wage indexes are published.

To accommodate the service sector expansion, the Bureau developed and implemented an improved quality management program. Also developed was a new occupation selection procedure that will reduce variance of indexes and the burden on survey respondents.

Two projects required to ensure the continued viability of the program were completed during the year. First, the 1970 census employment counts by industry and occupation that were the fixed weights of the ECI were replaced by 1980 census employment counts. Second, the last of the original establishment sample, selected in 1974, was replaced. This systematic replacement of the establishment sample, now completed, will ensure that in the future no establishment will be in the sample for more than 4 years.

Finally, the implementation of the second portion of the new wage data entry and editing system introduced efficiencies which ensure that the remainder of the service sector expansion will proceed as planned.

The 1986 *National Survey of Professional, Administrative, Technical, and Clerical Pay* was delivered on schedule for use in the Federal pay comparability process. The survey was expanded to increase its coverage of firms with as few as 50 workers, including small firms in high-technology industries. As part of the present Administration's initiative to improve the PATC survey, the Bureau is planning to expand the survey to include service industries not now studied.

The annual Employee Benefits Survey of paid leave and employee insurance and pension plans in medium and large firms was conducted with expanded inquiry into emerging and rapidly changing provisions and practices. This nationwide benefit survey, done in conjunction with the PATC survey, provides a unique source of comprehensive data on detailed characteristics of employee benefit plans—leave, retirement, capital accumulation, and insurance—in private industry. The Bureau has published an annual bulletin including an analysis of benefit trends since 1979, the first survey year. This program produced a *Monthly Labor Review* article during the year on trends in cost containment and coverage in health insurance plans.

Seventy area wage surveys were conducted under the Bureau's regular program of occupational wage surveys in metropolitan areas. The incidence of employee benefits also was studied in 22 of these areas, and new job descriptions for electronic data processing occupations were introduced in 16 areas.

Planning was completed for converting the area wage program to a 90-area survey beginning in January 1987. The 32 largest areas will be surveyed annually, and the 58 smaller areas will be surveyed in alternating groups of 29 each year. The surveys will be probability-based and will reflect 1984 metropolitan area definitions published by the Office of Management and Budget.

Under a contract with the Employment Standards Administration, 89 area wage surveys and 6 special industry wage surveys were conducted for use in administering the Service Contract Act. The industry surveys

included first-time studies of forestry and logging activities in four Western States and of unlicensed employees on deep sea, dry cargo freighters. Plans for the 1987 program call for 86 area surveys, 2 surveys of food service establishments, an expansion of the forestry studies to cover six States, and surveys of oceangoing tugboats and deep sea tankers as well as freighters.

Eight industry wage surveys were conducted this year. Timeliness of interim and final reports continued to improve, with publication lags dropping as much as 3 months in some cases. Test questions were added to the life and health insurance survey, and questions on contracting practices were added to eight manufacturing industry surveys (four in fiscal year 1986 and four in the first quarter of 1987). These questions were designed to shed light on changing wage and occupational structures in the industries covered by the program, as well as to test procedures for collecting such information.

Data on the size of wage and compensation adjustments in major collective bargaining settlements (covering 1,000 or more workers) in private industry were published each quarter. Similar data were issued semiannually for State and local governments. The Bureau published detailed analysis of negotiated wage and benefit adjustments during 1985 for private industry and State and local governments.

The 1986 bargaining calendar was issued, providing data on major contracts scheduled to expire or subject to reopening during the year. An analysis of bargaining activity slated for 1986 was published in the January 1986 *Monthly Labor Review*. It examined key bargaining situations scheduled for the year, provided data on wage changes deferred to 1986 from settlements reached in earlier years, and gave information on potential cost-of-living adjustments. Data analyzing major work stoppages during 1985 were published in February 1986.

Current Wage Developments was published each month. It highlighted key events in labor-management relations and provided details of wage and benefit changes in individual major bargaining situations. It also contained monthly statistics on major work stoppages, listings of expiring agreements, and extensive data on changes in employee compensation in the nonagricultural economy.

Productivity and Technology

BLS further strengthened and expanded the program of measurement and analysis of productivity and technology—topics of substantial public interest. Productivity measures are widely regarded as major indicators of U.S. economic progress, and the Bureau refined and extended the series of published measures to provide broader coverage.

The number of industries for which BLS published labor productivity measures was expanded to include the following: metal doors, sash, and trim; metal stampings, and oil field machinery. A total of 140 separate productivity measures are now issued for industries in the manufacturing, mining, transportation, trade, communication, and service sectors of the economy.

The Bureau also made progress in measuring productivity in the government sector. The productivity measures for the Federal Government were updated to cover fiscal year 1984. These measures currently cover fiscal years 1976 to 1984 for 28 functional groupings of Federal agencies, representing 67 percent of the Federal civilian work force. In addition, measures for several State and local government activities were updated.

The multifactor productivity measures published for major sectors of the economy advanced a major BLS effort to expand official productivity measures to take account of the role of capital equipment in changes in U.S. labor productivity.

First introduced in fiscal 1983, these key measures benefitted from considerable effort made over the past year to refine and extend them. Preliminary measures of multifactor productivity were completed for all 2-digit manufacturing industries and are in the process of review. Developmental work on a multifactor measure for the tires and tubes industry was completed.

Studies are under way to assess factors that affect productivity movements, including the impact of research and development expenditures, changes in labor force composition, changes in capacity utilization, changes in factor prices and depreciation schedules, and changes in the relationship of hours worked to hours paid.

In the international area, the Bureau updated trends in manufacturing productivity and labor costs for 12 countries and continued research toward the development of multifactor productivity measures for Germany and Japan.

The measures of comparative levels of hourly compensation costs for production workers in 34 countries and 39 manufacturing industries and the series on international comparisons of labor force, employment, and unemployment in 10 industrial countries also were updated. These measures provide insights into the changing competitive position of the United States.

In response to substantial public interest, the Bureau continued to assess the employment implications of automation and other technological changes. Reports appraising the impact of major technological changes on productivity, employment, and occupational requirements over the next 10 years were prepared for four additional major American industries—tires, aluminum, aerospace, and banking.

Economic Growth and Employment Projections

The Bureau published labor force, economic, and industry and occupational employment projections for the 1984–85 period. The 1986–87 edition of the *Occupational Outlook Handbook* also was completed and published. An analysis of the shift of employment and output from goods-producing industries to service-producing industries was published in the *Monthly Labor Review*. The article, "Deindustrialization and the Shift to Services," addressed concerns about the supposed loss of the country's industrial base. Other *Review* articles presented alternative projections for the health services and the computer manufacturing industries and addressed concerns about changes in the pattern of employment growth. The *Review* also included additional analysis and discussion of the "declining middle class" as well as a report on the temporary help industry. BLS published *Occupational Projections and Training Data*, a bulletin containing data on occupational employment growth and training patterns for use in career guidance and education planning.

The *Occupational Outlook Quarterly* featured special analyses on the job prospects for college graduates. Articles focused on the improving prospects for all college graduates and for those receiving Ph.D. and MBA degrees. Other articles in the *Quarterly* discussed the need for computer training, the outlook for childcare workers, and job prospects for recreational therapists. The spring 1986 issue presented the *Job Outlook in Brief*, which summa-

rized the employment prospects for all occupations in the 1986–87 edition of the *Occupational Outlook Handbook*.

Occupational Safety and Health Statistics

As part of its continuing effort to improve the Nation's work injury and illness statistics, BLS issued new guidelines to assist employers in keeping better injury and illness reports. New publications containing the guidelines, as approved by the Office of Management and Budget, are *Recordkeeping Guidelines for Occupational Injuries and Illnesses*, a detailed version containing comprehensive information, and *A Brief Guide to Recordkeeping Requirements for Occupational Injuries and Illnesses*, an abbreviated version of the guidelines for ready reference and to aid managers and employers in small establishments. The guidelines represent the official Department of Labor interpretation of employer recordkeeping requirements under the Occupational Safety and Health Act of 1970 and 29 CFR Part 1904 and have been described by OMB as supplemental instructions to the recordkeeping forms, OSHA Nos. 200 and 101. The guidelines (which replace the 1978 Report 412–3, *What Every Employer Needs to Know About OSHA Recordkeeping*) and the forms are approved through December 31, 1988.

Copies of both versions of the guidelines were made available for nationwide distribution. Copies of the abbreviated version were mailed nationwide to employers with 100 or more employees. In addition, the Bureau and its regional offices have launched a comprehensive training and promotional effort to assist employers, employees, and others in using the new materials.

BLS continued to assist the expert panel selected by the National Academy of Sciences' Committee on National Statistics in its study of the quality of BLS occupational injury and illness statistics. The Bureau contracted for the Academy study in 1985 as part of its effort to improve the quality of occupational injury and illness data.

Another initiative to improve the quality of injury and illness statistics was BLS sponsorship, in December 1985, of a symposium of government, academic, and business representatives to discuss ways to improve the measurement and reporting of occupational illnesses. As an outgrowth of the symposium, several State health depart-

ments have continued to assist BLS in work to improve the measurement of occupational illnesses.

The Bureau reported results of the 1984 Annual Survey of Occupational Injuries and Illnesses in a November 1985 news release including national estimates of incidence rates and numbers of occupational injuries and illnesses by industry. Detailed statistics by industry and size of establishment were published in a subsequent bulletin issued in May 1986. Occupational fatality estimates and causal characteristics appeared in an article in the May 1986 *Monthly Labor Review*. Individual State estimates for 1984 were produced by 39 States. In February 1986, the Bureau mailed survey forms to about 280,000 employers nationwide to collect 1985 data.

In fiscal 1986, 32 States participated in the Supplementary Data System, which provides detailed data on the characteristics of work injuries and illnesses based on State workers' compensation records. Microdata files for 1985, which include records for over 1 million cases, are to be available from the National Technical Information Service. NTIS also will make available standard Supplementary Data System Tabulations for 1985, showing distributions of occupational injuries and illnesses by industry and occupation.

Work Injury Reports released in fiscal year 1986 were *Injuries to Construction Laborers* and *Injuries to Warehouse Workers*. Surveys in progress included chemical and heat burn injuries; injuries to longshore workers; injuries involving heavy construction equipment, and injuries involving industrial machines in manufacturing. The Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health use results of work injury studies to evaluate and develop safety standards, compliance strategy, and training programs.

Managerial Developments

Resources. The Bureau completed the third year of cooperative agreements for its labor market statistical programs with 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. We developed cooperative agreements for fiscal year 1987 for these areas along with American Samoa, Guam, and the Northern Mariana Islands. This year, BLS assumed financial responsibility for the Covered Employment and Wages Program, for-

merly under jurisdiction of the Employment and Training Administration. BLS is stressing the collection, analysis, and use of cost, productivity, and performance data to improve program management.

Technology. The year saw a major achievement in the Bureau's use of microcomputer technology—the installation of Local Area Networks in all regional offices. BLS staff brought microcomputer facilities into successful operation through user training in network management, workstation operations, and remote job entry. The development and installation of workstation software permitted the replacement of regional keypunch operations—an important technological step forward.

Work to establish the basic structure of the Bureau's long-term network environment progressed well. BLS staff completed a research and development effort to identify and select the next generation of networking software and introduced a policy for procurement and management of network resources.

Publications. Under a pricing formula which BLS helped work out, the Government Printing Office significantly reduced the prices of BLS periodicals. In addition, 2-year subscriptions (instead of the previous limit of one year) became available for the Bureau's periodicals, thus making annual renewals unnecessary for subscribers who prefer multiyear contracts.

Five of the Bureau's publications won awards in competitions sponsored by the Society for Technical Communications and the National Association of Government Communicators.

Because of the needs of a growing number of BLS data users to store and analyze information on personal computers, BLS began making its data available on diskettes.

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Occupational Safety and Health Administration

Fiscal Year 1986 marked a continuation of OSHA's efforts, begun in earlier years, to expand communication and cooperation to enhance the ability of government, labor and industry to improve working conditions in our Nation's workplaces.

Without abandoning traditional efforts at standard setting and enforcement, OSHA began or continued a number of initiatives designed to encourage voluntary efforts to eliminate or control workplace hazards.

Such initiatives ranged from a cooperative venture with the American Society of Safety Engineers and the Associated General Contractors to celebrate jointly the fifth annual National Safety in the Workplace Week, June 21–25, to special emphasis programs to focus on particular workplace hazards or particularly dangerous industries.

A number of new safety and health standards were finalized during the fiscal year and several new hazards were the subject of proposed standards.

Inspection activities were highlighted by vigorous enforcement of safety and health standards. Record high penalties were proposed as a result of the inspection of Union Carbide Chemical Company that found many alleged violations of standards and recordkeeping requirements.

Training and education efforts were stepped up in recognition of the importance of such programs. Consultation visits to employers, particularly small employers without staff safety and health expertise, continued to be a valuable adjunct to OSHA's inspection programs. OSHA's Voluntary Protection Programs (VPP) were expanded to recognize the excellent safety records of several companies added to the roster of VPP participants, and OSHA continued to stress cooperation in its partnership with the States that operate their own safety and health programs.

Standards-Setting

During the year, OSHA continued its effort to develop standards that are protective, flexible, and cost effective.

An updated version of the Electrical Standard for Construction Sites was one example of this effort. This final standard comprises four major parts: installation safety requirements for electrical equipment and installations; safety-related work practices, not only in the use of electrical equipment but to avoid accidental contact with energized lines both above and below ground; safety-related maintenance and environmental conditions; and safety requirements for special equipment.

OSHA also proposed updating its Accident Prevention Tag Requirements to add flexibility and to better protect workers. Accident prevention tags temporarily warn workers about a hazard until it is eliminated or permanent protection can be provided. A tag will alert workers to defective equipment or warn them against energizing an electrical circuit while another employee is working on it.

Under a new final rule issued at year's end, employers are no longer required to maintain detailed records of certain equipment and material maintenance tests and inspections. Instead, certifications will be allowed that only need to include the date the inspection or test was performed, the signature of the person conducting the test, and an identifier of the equipment tested. This change affects provisions of OSHA's general industry and shipyard standards.

Also, a proposed rule was published during the year under which ship builders and repairers would no longer be required to fill out material safety data sheets to satisfy both OSHA's maritime standards and its hazard communication standard; instead, they need comply only with the latter.

Another proposed rule would cover servicing Single Piece Rim Wheels in Marine Terminals. Under the proposal, the approximately 5,000 employees who service rim wheels at 400 marine terminals would be afforded the same protection as workers who perform similar operations in general industry.

In the area of health standards, OSHA published a final standard covering asbestos exposure in general industry and a new standard covering employee asbestos exposure in the construction industry. The new standards limit employee exposure to asbestos to .2 fibers per cubic centimeter of air as an eight-hour time-weighted average, a ten-fold reduction from previous limits.

Final amendments to the standard for occupational exposure to cotton dust (originally promulgated in 1978) were issued December 13, 1985. The revisions include incorporation of an action level; modification of exposure monitoring requirements; extension of compliance deadlines for ring spinning of coarse count yarn with high cotton content; addition of a protocol for determining equivalency to the vertical elutriator (a device for measuring levels of cotton dust); incorporation of a wage retention provision for workers removed from exposure for medical reasons; exclusion of oil mist from the definition of cotton dust; clarification of the scope of coverage; and substantial changes to the washed cotton provisions of the standard to reflect current research.

On September 30, 1986, OSHA published final rules amending the Hazard Communication Standard. The amendments include a new definition of the term "trade secret" that removes from the definition coverage of chemical identity information that is readily discoverable through reverse engineering.

A separate change includes provisions that permit employees, their designated representative, and occupational health nurses to have access to trade secret information.

A proposed rule on benzene was published in the *Federal Register* on December 10, 1985. The new proposal would reduce the permissible limit for worker exposure to benzene to 1 part per million parts of air (1 ppm), measured as an eight-hour, time-weighted average. In addition, an action level of 0.5 ppm and provisions for exposure control methods, personal protective equipment, exposure monitoring, training, medical surveillance would be included in the new standard.

OSHA also published a proposed rule that would reduce worker exposure to formaldehyde. It would reduce the permissible limit for employee exposure to formaldehyde to an eight-hour time-weighted average of either 1 or 1.5 ppm and would require the employer to take other actions, such as exposure monitoring and medical surveillance, to protect employee health.

Enforcement

In FY 1986, OSHA conducted a total 64,071 inspections. This total, although less than the 71,639 inspections

conducted the previous year, reflects a greater focus on health inspections and on special emphasis programs, both of which take significantly longer time than safety inspections.

In the largest enforcement action in its history, OSHA cited Union Carbide Corporation for a total of 221 instances of alleged safety and health violations and proposed a $1,377,700 penalty. The citations resulted from the completion of the first phase of a comprehensive, wall-to-wall inspection begun at the site on September 17, 1985.

The willful violations focused on two areas: the company allegedly failed to provide respiratory protection to employees required to be exposed to unknown levels of phosgene, and it allegedly failed to record instances of injuries, including those requiring medical treatment or resulting in restricted activity or lost workdays. It also allegedly failed to provide critical supplemental medical information on asbestosis cases. Along with the violations, OSHA made nearly 200 recommendations aimed at improving plant safety.

In FY 1986, OSHA strongly emphasized the importance of employers maintaining proper workplace injury and illness records. Such records are essential both for an employer's own safety and health program, and as the basis OSHA uses to target its inspections in the most hazardous workplaces.

To help address broad concerns for safety and health problems in the chemical industry, OSHA began a special emphasis inspection program in that industry. Initially operated as a pilot program, OSHA will make detailed and comprehensive audits of plant safety as well as the usual workplace inspection.

Special emphasis programs also were established in other industries to focus OSHA inspection attention on troublesome areas. These included fireworks manufacturing, trenching operations, cleanup operations of hazardous waste sites, and inspections to assure compliance with OSHA's Hazard Communication standard.

OSHA also began a pilot program to help employers reduce back injuries, which account for an estimated one-fifth of all workplace injuries and illnesses.

Under the pilot program, OSHA inspectors checked for reports of back injuries whenever they consulted an employer's accident records, reviewed the employer's train-

ing program for lifting and other administrative and engineering controls, and offered whatever help the employer needed in training, job-redesign or other measures.

Special Emphasis Programs carried over from FY 1985 and completed in FY 1986 were: asbestos, swing scaffolds, and grain handling.

In addition, OSHA recognized that local conditions could require special emphasis enforcement programs specific to individual regions of the nation. Accordingly, 15 such programs were proposed by the 10 OSHA regions and approved by the national office. They will continue as long as conditions require, subject to ongoing reevaluation. They include programs such as that for the logging industry in Region X, cotton dust in Region IV, smelters in Region IX, fall hazards in construction in Regions VII and VIII, and oil and gas excavation in Regions V and VI.

OSHA's Hazard Communication Standard, promulgated on November 23, 1983, became effective for employers who manufacture, import, or distribute hazardous chemicals in FY 1986. The standard has far-reaching importance, both in providing necessary information on workplace hazards to employees, and in its performance-oriented nature for employers.

The Directorate of Field Operations participated in a significant program to train both employers and OSHA staff in the requirements of the standard, and in means employers may use to achieve compliance with it. An enforcement directive was prepared, with two later revisions, to guide the field in implementing the standard. In addition, a considerable effort went into developing and distributing interpretations of the standard's provisions, which were made readily available to affected employers.

Federal Agency Programs

Federal agencies continued their efforts to achieve the President's goal of a three-percent reduction of injuries and illnesses per year for the next five years. During the third quarter of Fiscal Year 1986, seven agencies were meeting the President's goal: the Departments of Agriculture, Housing and Urban Development, and Interior; the General Services Administration; National Aeronautics and Space Administration; Tennessee Valley Authority; and the Veterans Administration. In the government as a whole there was a 7.1 percent reduction in injuries and illnesses.

OSHA provided assistance to Federal agencies in the areas of training, consultation, targeting, evaluations, enforcement, and incentive programs. In addition, new recordkeeping and reporting guidelines for Federal agencies were published in conjunction with new forms that were issued by the Department's Employment Standards Administration. OSHA also evaluated the occupational safety and health programs of the Departments of Health and Human Services and Justice.

The 40th Annual Federal Safety and Health Conference was held in New Orleans, LA, on October 28-30, 1985, in conjunction with the National Safety Council's Congress and Exposition. There were more than 500 attendees at the conference, representing more than 35 Federal agencies and 40 Federal Safety and Health Councils. The conference provided a valuable forum for presenting information and ideas that would assist the agencies in developing programs to assure on-the-job safety and health protection for Federal workers.

State Programs

During FY 1986, OSHA continued to strengthen its partnership with the States. Twenty-five States and territories are administering their own OSHA-approved State plans. Twenty-three plans cover both private and State and local government employment; two, Connecticut and New York, are limited in scope to employees of the State and its political subdivisions. OSHA officials attended quarterly meetings held by State plan officials to assure the States' continued involvement in policy initiatives and other matters of mutual interest.

Key agency actions in the State program areas during the year included:

- Granting final approval to one additional State, Indiana, bringing the total to 12. (Final approval for the Arizona, Iowa, Kentucky, Maryland, Minnesota, Tennessee, Utah, and Wyoming State plans was granted in FY 1985, and for the Virgin Islands, Hawaii and Alaska in 1984.) Final approval reflects OSHA's judgment that, in actual operation, the State plan, is "at least as effective" as the Federal program.
- Certifying the Connecticut State plan (which covers only State and local government employees), bring-

ing the number of States which have been certified to 24. Certification attests to the structural completeness of State plan before OSHA can grant final approval. (New York has approval to administer its plan though certification is still pending.)

- Approving the revised compliance staffing requirements (benchmarks) of the four remaining State participants (Indiana, North Carolina, South Carolina and Virginia) in the initial round of the benchmark revision process. The benchmark revision approvals were in accord with the terms of the Court order in *AFL-CIO* v. *Marshall* (C. A. No. 74-406.), and reflect current policies and state-specific information.
- Processing inspection data from the New York State plan into OSHA's computerized, Intergrated Management Information System (IMIS), bringing the total to 22 States participating in OSHA's IMIS. Installation of microcomputers enabling on-line submission and retrieval of data was completed in 20 of the participating States.
- Encouraging and providing guidance for States' participation in OSHA-initiated special emphasis programs (Safety Targeting, Superfund/Hazardous Waste Sites, Trenching and Excavation, Fireworks Manufacturing, and Chemical Industry).
- Issuing revised State plan monitoring procedures reflecting experience gained since implementing the agency's data-based monitoring system in FY 1984.
- During FY 1986 OSHA actively coordinated with the 50 States, Puerto Rico and the Virgin Islands to encourage their development of field sanitation standards and enforcement programs.

Voluntary Efforts

A key OSHA goal is improved communication and coordination with employers and employees to supplement enforcement efforts. The consultation program is one way OSHA assists employers in identifying and correcting hazards and in developing effective management systems for preventing workplace hazards. Consultation services are provided primarily with Federal funds and at no cost to the employer. Targeted mainly on smaller employers in more hazardous businesses, consultation may cover all or

part of the workplace, depending upon the employer's request. The service is administered by State government agencies or universities utilizing staff separate from enforcement. The service is confidential and does not trigger a State or Federal inspection. The service is penalty free, but employers are required to take immediate action to eliminate employee exposure to imminent dangers and to correct identified serious hazards within a reasonable time. During FY 1986, OSHA conducted nearly 37,000 consultation visits.

During FY 1986, OSHA published a new system for monitoring the effectiveness of the consultation program. Consultants expanded their efforts to provide training to employers and employees and to give employers safety and health program assistance. The program for Inspection Exemption through Consultation continued, with 484 Exemption Certificates being issued during FY 1986. These certificates were granted to smaller employers who received a comprehensive consultation hazard survey, corrected all hazards identified, and demonstrated that an effective safety and health program is in operation.

The Wisconsin Occupational Health Laboratory (WOHL), continues to provide analytical services to the majority of the State consultation projects. The report of the September 1985 OSHA monitoring visit to WOHL was completed. During FY 1986, WOHL presented the Laboratory Orientation Short Course to 11 industrial hygiene consultants.

In its continuing effort to improve the cost-effectiveness and efficiency of the consultation program, OSHA placed a cap (20 percent of personnel costs) on Federal funding of indirect costs. In addition, a proposal is under development that would place a cap on all overhead costs (both direct and indirect administrative expenses) associated with consultation program operations. Uniform budget categories were established in FY 1986 which have enabled comparative analyses of State budget submissions in support of this effort.

Consultants continued to support the OSHA special emphasis program in the fireworks manufacturing industry by promoting their services to these employers. Assistance in developing effective hazard prevention systems was emphasized. Thirty-eight consultation visits were made to fireworks manufacturers in FY 1986.

Another program provides for consultation services, including air monitoring for inorganic arsenic, to employers who use inorganic arsenic compounds in the preservative treatment of wood. To receive this service, employers must request a comprehensive hazard survey.

Voluntary Protection Programs

In another important area, OSHA's Voluntary Protection Programs (VPP) continued to reach those companies that are fully committed to employee safety and health and are incorporating these objectives in the daily operation of their workplaces. There were 11 new approvals in FY 1986. Participants in the programs continue to avoid approximately 80 percent of the lost workday cases they would have had if their rates were no better than the average for their industries. The first Star evaluations have found that improvement continues during participation in the program. Eighty percent of those sites participating in Star in 1984 improved their rates in 1985 and 1986.

The VPP's were formally revised with a notice published in the *Federal Register* on October 29, 1985. One of the original VPP, Praise, is being phased out because of lack of interest. A new demonstration program was instituted to provide an opportunity to participate to companies with excellent safety and health programs but with elements which differ from those required for Star.

Major presentations were made by VPP participants and OSHA staff at the National Safety Congress, the American Industrial Hygiene Association Conference, and the American Society of Safety Engineers' Annual Professional Development Conference.

The participants in the VPP's have formed an association to provide for safety and health information exchange and to promote the concept of the VPP. The association's second annual meeting was held in Atlanta in September with approximately 90 people in attendance, including representatives of other companies interested in applying to the VPP.

In conjunction with the agency's special emphasis on the chemical industry, VPP procedures were expanded to include coverage of management's process review systems to ensure that VPP participants in that industry are sufficiently well prepared in prevention, control and emergency response.

Training and Education

The FY 1986 enrollment at the OSHA Training Institute for compliance officers, State personnel, Federal safety and health representatives for other agencies, and the private sector was approximately 7,100. The safety and health training offered at the Institute is an integral element of OSHA's efforts to assist employers and employees in the elimination of occupational safety and health hazards. The Institute expanded its offering to 61 courses, 15 of which were conducted at sites away from the Institute where actual worksite situations could be experienced. Four courses for private sector personnel were offered, including one on safety and health for the maritime industry, one for construction, and two for general industry. In addition, enrollment in 56 technical safety and health courses was opened to private sector personnel for the first time in fiscal year 1986.

The Office of Training and Education developed and presented training to support the agency's Special Emphasis Programs: five sessions of the Fireworks Training Course were conducted; the Process Safety and Health in the Chemical Industry Course, designed for compliance officers who will conduct chemical industry inspections were held in Edison, NJ, Baton Rouge, LA, and Atlanta, GA, and two sessions were presented of the Hazardous Waste Site Inspection Course, designed for OSHA personnel conducting safety and health inspections of EPA Superfund sites.

This year the seminar entitled "Orientation to Occupational Health Hazard Recognition for Physicians" was expanded to three days. Presented by the OSHA Office of Training and Education in conjunction with the National Institute of Occupational Safety and Health (NIOSH) and the Medical College of Wisconsin, this seminar is designed to assist physicians in evaluating workplace hazards and diagnosing occupational illnesses.

During the fiscal year the Office of Training and Education completed several projects, including:

- Completion of the final three segments of a ten part hazard recognition slide-tape series for the small employer;
- Development of training modules supporting the agency's Special Emphasis Programs in trenching and fireworks manufacturing;

- Development of a 90-minute training module, "Orientation to the OSHA Special Emphasis Program for Trenching and Excavation Operations for County and Municipal Inspectors," to assist Area Office personnel in training local government inspectors in the requirements and provisions of the Special Emphasis Program;
- Development of a four-hour training module, to provide training to fireworks manufacturers in hazard recognition and related OSHA standards;
- Development of a videotape on OSHA's Hazard Communication Standard, and
- Development of two crossover courses, Safety Hazard Recognition for Industrial Hygienists and Introduction to Industrial Hygiene for Safety Personnel, was completed. The materials were provided to OSHA offices and are available for purchase from the National Audiovisual Center.

Under its New Directions grant program, OSHA awarded $1.2 million to 25 nonprofit groups providing a variety of job safety and health services. The grants support training and education projects addressing serious problems in construction, manufacturing, and other high hazard occupational and industrial sectors.

The New Directions grant program is designed to provide the funds an organization needs to develop its staff, skills, and services to become a competent, self-sufficient center for job safety and health. Grantees generally participate in the program for up to five years, with some grantees also being funded for a one year planning phase in which the five year program is planned and organized.

Twenty-seven New Directions grantees completed their program in fiscal 1986. Most of these grantees have become competent, self-sufficient centers for job safety and health. This group consists of ten labor organizations, four employer associations, four educational institutions, and nine other nonprofit organizations.

Forty-two current and former grantees were awarded supplemental funds at the end of fiscal year 1985 to produce educational materials for OSHA during fiscal year 1986. These supplemental awards are being used to produce 65 different training program materials, including slide-tapes, videotapes, training courses with visual aids, and manuals.

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Employment Standards Administration

All Employment Standards Administration (ESA) programs were involved in major initiatives in FY 1986. Despite budget and staff cuts, the Wage-Hour Division, the Office of Federal Contract Compliance Programs, and the Office of Workers' Compensation Programs met or exceeded program plan goals for the year.

The Wage-Hour Division staff focused its attention in FY 1986 on the *Garcia Decision* by the Supreme Court, which extended minimum wage and overtime coverage under the Fair Labor Standards Act (FLSA) to all State, county and local government employees. The Congress enacted the FLSA amendments on November 13, 1985, to be effective on April 15, 1986. The Wage-Hour Division issued proposed regulations on April 18, 1986. The decision by the Supreme Court and the action by Congress changing the FLSA presented the ESA with a wide range of policy and legal issues affecting every political jurisdiction in America.

The Office of Federal Contract Compliance Programs (OFCCP) continued improvements in its program performance. Complaint backlogs were reduced; training development was stepped up, and new uses of computer technology were adapted to the program to increase staff effectiveness in the enforcement of affirmative action goals for minorities and women under Executive Order 11246 and in protecting of handicapped employees and veterans under Section 501 of the Vocational Rehabilitation Act and Section 2012 of the Vietnam-era Veterans' Readjustment Assistance Act.

In the Office of Workers' Compensation Programs (OWCP), the first nationwide medical fee schedule was implemented for the Federal Employees' Compensation Program, using 4,400 separate medical procedures applied in 385 geographic areas to review the appropriateness of fees charged by doctors for services to injured workers. In the Black Lung Program for disabled mine workers, a tax increase was approved by Congress to address the nearly $3 billion debt which the Trust Fund has incurred. And in the Longshore and Harbor Workers' Compensation Pro-

grams, final regulations were issued to implement the major revisions to the Act in late 1984.

Office of Federal Contract Compliance Programs

OFCCP continued to foster affirmative action and the elimination of discrimination from the workplace of Federal contractors, and to obtain redress for victims of discrimination.

During FY 1986, OFCCP completed 5,152 compliance reviews. The reviewed contractors employed a total of 2.9 million employees. In addition, OFCCP reduced the number of aging compliance reviews over one year old. At the end of FY 1986, there were 96 such reviews. Complaint cases in inventory at the end of the fiscal year declined from 3,208 in FY 1980 to a current inventory level of 658 in FY 1986. OFCCP conducted 1,100 investigations of discrimination complaints or of failure to take affirmative action.

Where contractor noncompliance was found, OFCCP entered into 1,342 conciliation agreements and 1,999 letters of commitment. OFCCP also recommended 35 enforcement actions. These actions can result in removal of contractors from eligibility to compete for federal contracts. The Solicitor of Labor filed formal administrative complaints against 12 Federal contractors.

Of the agreements obtained in FY 1986, 472 were cash benefit or other financial agreements in which contractors committed a total of $9,802,926 in financial outlays. These agreements involved lump sum cash payments, back pay, salary adjustments, accommodation, recruitment, training costs and other settlements. Of this total in financial agreements, $1,911,145 in back pay awards went to 499 women, minorities, disabled persons and veterans.

Since 1982, OFCCP has taken positive steps toward effective voluntary affirmative action in the contractor community. As a result, in FY 1986 more than 10,715 contractors were provided with 59,807 hours of technical assistance to better enable them to comply with OFCCP regulations. In addition, 26 liaison groups were formed in FY 1986. These groups explore general compliance problems and solutions in a cooperative setting. They contribute valuable input to OFCCP on ways to improve the compliance process and address aspects of affirmative action unique to their employment situations or industries.

OFCCP, in turn, provides advice, specific technical assistance and an exchange of information.

In 1,727 instances, OFCCP arranged "linkage" agreements between employers and agencies providing worker training or referral services.

During FY 1986, OFCCP gave further priority to the maintenance of quality and timeliness in its compliance actions. A number of initiatives were in effect or were initiated to increase program outputs and improve quality and program effectiveness.

Initiatives which were in effect included:

- Decentralization of the Complaint Administration System (CAS) to the regions, which will improve OFCCP's ability to track and monitor the processing of allegations of discrimination and produce more timely management, operational and court-ordered reports;
- Tight control and monitoring of cases in progress (case management) to ensure timely completion of compliance reviews and complaint investigations, which have reduced the number of hours required to conduct compliance reviews and complaint investigations;
- Attention throughout the management process on case quality assurance, i.e., comprehensive and thorough investigative content and consistent application of regulations and procedures;
- Continued encouragement of contractor's voluntary and self-directed efforts toward affirmative action through increased high quality technical assistance, recognition of contractors whose compliance efforts are meritorious and formation of liaison groups with OFCCP;
- Continued implementation of a memorandum of understanding with other DOL agencies to eliminate duplication of compliance efforts, create a more effective exchange of information, and reduce the burden of the activities of the respective offices on the public.

Initiatives under development involve:

- Development and implementation of additional guidance on proving and remedying systemic discrimination;

- Revision of the Contract Compliance Manual to conform with agency policy and to improve guidance for compliance officers;
- Refined and improved management information systems designed to enhance the quality, integrity, and timeliness of data used in evaluating contractor performance, as well as program performance;
- A revised training program to address the needs of professional field staff for programmatic training to increase quality and efficiency in the compliance review process and the investigation of complaints;
- Continuation of an in-depth study to determine the relationship between the quality and complexity of compliance actions and the hours expended to complete them, using an enlarged data base;
- Assessment of affirmative action and discrimination in light of emerging technologies through discussions of the future of affirmative action with various EEO organizations, federal contractors and community groups in terms of equal employment opportunity through the year 2000;
- Development and implementation of a Human Resources Planning System aimed at obtaining, developing and maintaining a quality work force;
- Implementation of the Administration's Productivity Plan (Executive Order 12552) to achieve a 20 percent productivity increase by FY 1992. (For instance, one productivity initiative will be the use of microcomputers by equal opportunity specialists (EOSs) during complaint investigations and compliance reviews. Based upon the prototype project conducted during FY 1985, microcomputers would enhance the quality and timeliness of complaince reviews by as much as 10 hours each. These enhancements would be achieved by improving the accuracy and sophistication of the numerical calculations required in these actions and by reducing the time required to produce written documents);
- Refocusing, over the next 2 to 3 years, program accomplishments away from completed paperwork to resolution of employment problems and help for protected groups.

Wage and Hour Division

After the decision by the U.S. Supreme Court in *Garcia v. San Antonio Metropolitan Transit Authority et al.* (February 19, 1985), which held that the Fair Labor Standards Act (FLSA) may constitutionally be applied to State and local governments, representatives of many State and local government employer and employee organizations identified several potentially perplexing consequences.

In response to these concerns, the Congress, on November 13, 1985, enacted amendments to the FLSA. These amendments changed certain provisions of the FLSA as they relate to employees of State and local governments. For example, the amendments contain special provisions regarding compensatory time off, multiple job situations, and volunteer services.

On April 18, 1986, the department published proposed regulations to implement the amendments (29 CFR 553).

Other FLSA regulatory initiatives in fiscal 1986 included the publication of proposed rules updating the recordkeeping requirements of the Act (29 CFR 516) and an advance notice of proposed rulemaking regarding the minimum wage and overtime pay exemption for executive, administrative, professional, and outside sales employees (29 CFR 541).

Minimum Wage and Overtime Standards

Timely response to complaints was the cornerstone of the Wage and Hour Division's enforcement strategy during fiscal 1986. The division conducted 72,641 compliance actions under the FLSA, of which 55,523 were initiated as a result of complaints from workers or concerned citizens. The inventory of complaints decreased from 25,590 to 23,488.

The FLSA enforcement program disclosed $40.6 million due 167,401 workers as a result of minimum wage violations, and $92.8 million due 317,216 employees as a result of overtime violations. Employers agreed to pay $21.9 million in unpaid minimum wages to 150,605 workers and $71.5 million to 274,980 employees due overtime pay for a total of $93.3 million in FLSA back wages in fiscal 1986.

The difference between the amount of back wages found due employees and the amount that employers agreed to pay reflects, for the most part, sums involved in

pending litigation and the refusal of certain employers to pay back wages in cases the department deemed unsuitable for litigation. The FLSA also permits individuals to bring private suits to collect back wages, liquidated damages, attorney's fees, and court costs. The department's enforcement statistics do not include the back wage amounts recovered in private suits.

In fiscal 1986, 19,527 investigations were conducted under the Special Targeted Enforcement Program (STEP), which is aimed at discouraging employers from employing illegal aliens at less than legal wages. Because illegal aliens generally do not file complaints, the division targets investigations in industries and localities where aliens have traditionally been found to be employed. The purpose is to reduce the incentive for hiring those workers who tend to accept employment at less than the minimum wage and/or without proper overtime compensation.

Child Labor Standards

The Wage and Hour Division found 12,662 minors employed in violation of the child labor provisions of the FLSA during fiscal 1986. The division assessed $1.5 million in child labor civil money penalties against 843 employers who were found to be illegally employing 9,758 minors.

Special Minimum Wages

During fiscal 1986, the division issued 25,618 certificates under Section 14 of the FLSA, authorizing the employment of approximately 425,800 workers at less than the minimum wage. Full-time students and handicapped workers employed by sheltered workshops accounted, respectively, for 34 and 61 percent of the workers employed under certificates.

Industrial Homework

In fiscal year 1986, 10 certificates were issued to employers in the knitted outerwear industry.

Section 11(d) of the FLSA authorizes the Secretary of Labor to issue rules which regulate, restrict, or prohibit industrial homework in order to safeguard the Act's minimum wage requirements. The regulations currently

restrict industrial homework in six industries (gloves and mittens, women's apparel, embroideries, buttons and buckles, jewelry, and handkerchiefs) to individuals who are handicapped and cannot adjust to factory work or are required to remain at home to care for an invalid.

These rules have remained in effect without significant change since the 1940s. Following a series of regulatory and court actions commencing in 1981, the department published a final rule in November 1984, lifting the homework restrictions for employers in the knitted outerwear industry who obtain certificates from the Department of Labor authorizing such employment.

After carefully reviewing FLSA enforcement in the knitted outerwear industry under the certification process, the Department published proposed rules on August 21, 1986, which would lift the restrictions in the six remaining industries (29 CFR 530).

Migrant and Seasonal Agricultural Worker Protection Act

During fiscal 1986, there were 11,200 registrants (including 8,909 farm labor contractors and 2,291 farm labor contractor employees) who employed approximately 373,807 crew members.

The Wage and Hour Division conducted 6,047 Migrant and Seasonal Agricultural Worker Protection Act (MSPA) compliance actions during fiscal 1986 which resulted in civil money penalties totaling $1,676,335 assessed against violators. At the close of fiscal 1986, 340 Secretary's Orders were in effect denying farm labor contractors and farm labor contractor employees certificates of registration.

MSPA also prohibits a farm labor contractor from knowingly employing illegal aliens. In enforcing this provision, the Wage and Hour Division works closely with the Immigration and Naturalization Service. In fiscal 1986, 132 farm labor contractors were cited for employing a total of 1,762 illegal alien workers.

A number of investigations which evidenced possible criminal violations of other statutes were referred to the Justice Department in fiscal 1986.

The National Farm Labor Coordinated Enforcement Committee and regional coordination committees, comprised of representatives of the regional and national offices of the Employment Standards Administration, the

Employment and Training Administration, and the Occupational Safety and Health Administration, continued to coordinate programs and services that have an impact on migrant and seasonal agricultural workers.

Prevailing Wage Laws

Government contract enforcement concentrated on complaints alleging violations of the various laws that provide labor standards for employees performing government contract work. During fiscal 1986, 4,690 investigations were conducted under the Davis-Bacon and Related Acts, the Service Contract Act, and the Walsh-Healey Public Contracts Act. Back wages found due 51,097 workers under the provisions of these laws totaled $34.3 million. Employers agreed to pay $26.4 million of these back wage amounts to 46,240 workers. Additional monies were to be restored upon completion of administrative hearings or litigation action.

Pursuant to the Davis-Bacon and Related Acts, 15,571 prevailing wage determinations were issued during the fiscal year. Of this total, 1,798 were general determinations which apply to many construction contracts in a given geographic area, and 13,773 were issued for specific construction projects.

Improvements have been made in the process of collecting wage data for use in making Davis-Bacon wage determinations. One such improvement involves the publication of a manual containing updated wage survey methods. Various alternatives for further improvements to this process, including automation, continue to be explored. General wage determinations are issued under the Davis-Bacon Act for geographic areas with a significant amount of federal or federally assisted construction. The publication of these general wage determinations has been shifted from the *Federal Register* to a Government Printing Office (GPO) publication titled *General Wage Determinations Issued Under the Davis-Bacon and Related Acts.* This publication is available on a subscription basis with weekly updates.

The Wage and Hour Division newly issued or revised over 3,930 determinations of prevailing wages and fringe benefits for a wide variety of job classifications under the Service Contract Act. In addition, wage determinations

were issued for application to approximately 40,677 contracts.

On the regulatory front, one reform issue remaining to be resolved is the Department's revised rules which would allow for an expanded use of semi-skilled helpers on Davis-Bacon projects. Initiated in 1982, these provisions were challenged in court and deferred. On appeal, the courts upheld the Department's authority to expand the use of helpers, provided certain modifications were made in the regulations. The Department intends to implement new helper provisions that will comply with the rulings of the courts.

A number of bills were proposed in this session of Congress to increase the threshold for Davis-Bacon coverage. The Administration supports raising the current $2,000 threshold to $1 million on military construction and $100,000 on other construction.

The House Subcommittee on Labor Standards of the Committee on Education and Labor held hearings in September 1986 to examine the Davis-Bacon Act, with the stated purpose of reporting out a reform bill during fiscal year 1987.

Office of Workers' Compensation Programs

The Office of Workers' Compensation Programs (OWCP) continued to streamline management of its field offices in its three programs during FY 1986. In the Division of Federal Employees' Compensation (DFEC), longstanding backlogs were eliminated, field office management roles were redefined, and intensive management training was developed for line supervisors. In the Longshore program, implementation of an automated data processing system took place during the year. The Division of Coal Mine Workers' Compensation (DCMWC) upgraded its automated data processing capabilities through conversion to a new services contractor at the start of the fiscal year.

The office further emphasized cost-savings, program integrity, and the elimination of fraud, waste and mismanagement. Major efforts to reemploy disabled federal employees continued. Through coordination between OWCP rehabilitation specialists and DFEC claims examiners, rehabilitation saved $7.8 million in federal employees' compensation costs. In the Longshore program, rehabilitation saved $3.2 million in compensation costs.

In February 1986, the Longshore program published final regulations implementing the amendments to the Longshore Act, signed by President Reagan on September 28, 1984, making important changes in benefits. The revised regulations also permit debarment of medical providers to ensure the integrity of the program and increase penalties for fraudulent actions.

DFEC collected $14.4 million in third-party payments and over-payments to beneficiaries. DCMWC recovered $20.4 million from responsible coal mine operators and insurance carriers, and from overpaid beneficiaries and medical providers. An additional $5.3 million in accounts receivable were settled through waivers and write-offs.

Federal Employees' Compensation

The Division of Federal Employees' Compensation (DFEC) emphasized the importance of good field office management by requiring district offices to conduct quarterly internal reviews of office operations. These reviews follow systematic procedures which mirror the external accountability review process so that each office can determine its weaknesses and address them through such means as employee training.

A medical fee schedule was implemented on June 9, 1986, affecting physician and laboratory bills for services provided to injured workers. The automated system compares the billed cost to a maximum allowable fee schedule which reflects both the complexity of the service and medical cost in the geographical area where service was performed, and pays for the service only up to the maximum. Providers receive a detailed description of the fee reductions with procedures for appeal. The cost effectiveness of this control is being studied.

DFEC will shortly publish final revisions of its administrative regulations, the first such revision since regulations were issued implementing the extensive 1974 legislative amendments. Many administrative changes are being designed to improve monitoring of employee injuries, to encourage offers of light duty and modified work, and to spell out employees' rights to due process.

In September, the program completed implementation of its agreements with the Occupational Safety and Health Administration (OSHA) to provide FEC data for federal injury reporting. Henceforth, the agencies will provide

coded information concerning place of injury, occupation of the employee, type and source of injury in submitting the initial claim which DFEC will in turn provide to OSHA and employing agencies, enabling better monitoring of safety and health as well as compensation costs.

As part of its ongoing service to agencies, DFEC produced a self-instructional advanced training course for agency personnel who assist injured employees in filing and supporting claims. The new course builds on the basic course by addressing more complex issues in managing an effective workers' compensation program in an agency.

Avoiding interruption of income to injured workers remained a major focus. District offices are required to report quarterly on the percentage of wage loss claims paid within 14 or 45 days, and program standards were to be put into effect beginning in fiscal 1987. Data gathered from the claims tracking system will be used to identify areas where processing is slow, as in claims for recurrence of disability due to older injuries.

DFEC automated its accounts receivable and debt management operations, and further implemented the provisions of the Debt Collection Act. The automated system calculates and applies interest on eligible debts, generates information for reporting to credit bureaus and collection agencies, issues monthly bills, and provides reports for managing accounts receivable to district office fiscal managers.

Black Lung

The Division of Coal Mine Workers' Compensation continued decentralization. Review of diagnostic billings and the adjudication of Certificates of Medical Necessity (CMNs) were transferred from the national office to district offices closer to the claimants' homes. The division also completed the decentralization of Medical Benefits Only claims to district offices. Adjudication of CMNs is used to approve durable medical equipment, including home oxygen, home nursing services, and pulmonary rehabilitation treatment. The review and processing of medical determination billing prior to authorizing payment serves to improve the quality of the tests, to increase timeliness, and control related costs.

During fiscal year 1986, the division received 6,324 new claims and 2,956 refiled claims. Decisions were made

on 9,863 claims. At the end of the fiscal year there were 3,025 claims pending an initial decision. The division also held 851 informal conferences and forwarded 5,337 claims to the Office of Administrative Law Judges (OALJ) for formal hearing. The OALJ returned 8,235 decisions and orders to the division for review and necessary action. Additional workload included maintenance of approximately 67,000 Medical Benefits Only claims, 88,974 Trust Fund monthly payments claims, 7,372 claims in interim pay pending a final resolution of the employer's challenge to the claimant's eligibility, and 4,114 claims in which responsible mine operators were paying monthly benefits.

As a result of debt management activities, the Black Lung division recovered more than $20.4 million from responsible coal mine operators, insurance carriers, beneficiaries, and medical providers. Referrals to credit bureaus, collection agencies, and the Department of Justice were implemented under the Debt Collection Act of 1982. Overpayments of $5.3 million were settled through waiver or were written off as uncollectable. Approximately $585 million was paid in benefits to coal miners, eligible survivors, and medical providers. Of this amount, approximately $495 million was paid to miners and their survivors as monthly benefit payments.

Longshore and Harbor Workers' Compensation

In February 1986, the Longshore program published final regulations implementing the Longshore and Harbor Workers' Compensation Act Amendments of 1984. During the early months of fiscal 1986, public comments on the interim final regulations were evaluated. The final regulations implement important changes provided for in the 1984 amendments. The major provisions of the amendments clarify and limit the Act's jurisdiction, make changes in benefits, establish a method of providing benefits for victims of latent disabilities due to occupational disease, and provide additional safeguards against abuse such as increased penalties for fraud.

An automated case management system was implemented in all of the Longshore program's district offices in fiscal 1986. This was the first automated system developed for use by the Longshore program.

The system is comprised of the following three major subsystems:

- The Longshore Case Control Subsystem provides case tracking and transaction recordkeeping on all lost-time and death claims received by the Longshore district offices. It also furnishes the claims processing staff with a means of reviewing each claim as it proceeds through the administrative review and adjudicative process.
- The Longshore Correspondence/Word Processing Subsystem generates automatic correspondence to be sent to various parties involved in a specific case.
- The Longshore Management Information Subsystem will provide workload and management statistical information, pertinent to the overall operation of the Longshore program, individual district office effort, and claims examiner effort.

The first two subsystems were implemented and were operational in all of the district offices in fiscal 1986. The Longshore Management Information Subsystem is being programmed and tested and is scheduled to be operational in all district offices in fiscal 1987. The automated case management system has assisted in more timely case creation, case review and responses to inquiries and, in general, has provided for a more efficient workflow in the district offices.

Another major automation project completed in fiscal 1986 was the redesign and conversion of the Special Fund Benefit Pay and Assessment System from a separate, time-shared, contractor-owned/operated computer to an in-house Longshore program-owned microcomputer. The redesigned system provides increased capability and implements many of the recommendations from a recent audit report of the Office of Inspector General.

During fiscal 1986 approximately 41,200 lost-time injury reports were received and processed and 6,000 informal conferences were held. During a typical month in fiscal year 1986, 19,400 maritime and other workers covered under the Longshore and Harbor Workers' Compensation Act and its extensions, or their survivors, were receiving compensation payments.

Vocational Rehabilitation

The OWCP Division of Vocational Rehabilitation concentrated on the quality and timeliness of its services during

fiscal 1986, thereby assisting many injured workers to become self-supporting and reducing compensation costs.

This year a national reemployment program was implemented with the Department of Commerce. Other reemployment programs facilitated the return to employment of workers injured under the Federal Employees' Compensation Act. These efforts were under way in the Postal Service, the Tennessee Valley Authority, the Department of Agriculture and the Department of the Army.

A pilot rehabilitation study was developed with the Jacksonville, Philadelphia, and San Francisco district offices, involving cases covered by the Federal Employees' Compensation Act and the Longshore and Harbor Workers' Compensation Act. The study began October 1, 1986, for a period of one year. Through this study, OWCP will attempt to increase the number of injured workers successfully rehabilitated and identify a model system of service delivery that results in the highest number of injured workers returned to work without sacrificing the delivery of quality and timely services.

The division recruited, selected, and provided training in OWCP policy and procedures for approximately 84 additional contract rehabilitation counselors. They are paid by OWCP to provide testing, evaluation, counseling, guidance, placement and follow-up services to injured workers.

During the year, 622 injured Federal workers under the Federal Employees' Compensation Act were rehabilitated, saving more than $12,530 per worker in compensation costs. Total savings for the year were $7.8 million in compensation costs.

Also in fiscal 1986, 263 injured workers in the private sector were rehabilitated under the Longshore and Harbor Workers' Compensation Act, for savings of more than $12,141 per worker in compensation costs. As noted previously, total compensation costs saved for the year were $3.2 million.

Fraud, Waste and Mismanagement

In DFEC, standards for the development and adjudication of claims and effective case management have been enforced to assure that claims are processed in a timely manner and in accordance with the laws and regulations. The investigation of questionable claims through the use of

Wage-Hour and OFCCP compliance officers has been successful in reducing the number of claimants on the rolls who are no longer eligible for benefits.

Through Memoranda of Agreement with the Office of Personnel Management, OWCP and OPM matched beneficiary rolls to identify recipients of prohibited dual benefits, and achieved better mutual procedures for offsetting benefits to collect debts. Also in DFEC, the first and second lists of excluded medical providers were transmitted to the field offices and disseminated among employing agency offices. A process of reconciling accounts for the annual charging of benefit costs to the employing agencies was developed, and training in reconciliation was provided to fiscal officers.

DCMWC participated with the Social Security Administration and State and Federal agencies in computer matching to ensure integrity of monthly benefit payments to black lung beneficiaries. The division continued to work closely with the OIG on active investigations in several regions of some medical providers and others suspected of fraud. DCMWC continued to implement procedures for improving security to minimize fraud within the claims process, as well as conducting periodic audits which will ensure the integrity of the benefit payment system.

Emphasis continued toward the overall reduction of accounts receivable through improved debt management. During FY 1986, OWCP began referral of consumer delinquent debt to a private collection agent. Broader use was made of automated accounts receivable systems in the DFEC and black lung programs.

State Liaison and Legislative Analysis

Through its Divisions of State Employment Standards Program, Legislative Analysis and State Workers' Compensation Programs, the Office of State Liaison and Legislative Analysis continued to provide assistance to the States and to coordinate Federal-State activities in the areas of workers' compensation, labor standards, and equal employment opportunity.

The Division of Legislative Analysis developed Congressional testimony and background materials on affirmative action for federal contractors, industrial homework regulations under the Fair Labor Standards Act, and reform of the Davis-Bacon Act.

The evolution of the Omnibus Diplomatic Security and Anti-terrorism Act of 1986 was closely followed because of the possibility of double compensation of Federal employees under that Act and the Federal Employees' Compensation Act. The potential problem was solved in the House-Senate conference on the bill.

The Division prepared reports on Congressional bills on product liability and tort reform, occupational disease and parental and medical leave for short-term disabilities. None of those proposals was enacted. Lastly, Congressional efforts to reform immigration laws were monitored and reported, as were developments related to occupational disease legislation and proposals to require granting parental and medical leave for short-term disabilities to employees.

DLA also developed issue papers for legislative decisions and regulatory materials required under Executive Orders 12291 and 12498. In addition, the Division coordinated the preparation of the Employment Standards Administration's submissions to the annual *Regulatory Program of the U. S. Government*, and semiannual *Unified Agenda of Federal Regulations*.

The Division of State Employment Standards Programs furnished expertise on State labor standards laws and programs that impact on or are affected by ESA programs. The Division developed considerable information on State employment standards, such as the relationship between State law and the proposed new rules for industrial homeworkers, developments in the State prevailing wage field in relation to regulatory changes under the Federal Davis-Bacon Act, and increases in State minimum wage rates above the FLSA rate.

In promotion of improved Federal/State coordination of similar programs, DSESP served as catalyst and facilitator in the consideration of proposed ESA/State agreements for cooperative activities among similar programs.

The Division of State Employment Standards Programs provided technical advisory assistance and information on numerous labor standards subjects in response to some 1,800 requests from State labor departments and legislatures, management organizations, multi-State employers, organized labor, other Federal agencies, the Congress and others. Throughout the year, the Division maintained active working relationships with State govern-

mental labor officials and their organizations, and participated in several regional and national conferences of State officials. In serving as a national clearinghouse of information on State legislative developments, DSESP reviewed and analyzed about 1,200 labor bills and new laws and prepared annual and biennial articles on State trends for publication.

The Division of State Workers' Compensation Programs analyzed 172 enacted workers' compensation amendments from 669 proposed amendments during fiscal 1986. From this information, it prepared its semiannual publication, State Workers' Compensation Laws, as well as numerous informational charts and tables.

The Division provided on-site technical assistance to nine State workers' compensation agencies in the implementation or improvement of their information systems. In conjunction with the International Association of Industrial Accident Boards and Commissions, the Division updated its in-depth profile on the administration of each State workers' compensation agency for inclusion in the publication, State Workers' Compensation Administration Profiles.

The Division of State Workers' Compensation Programs provided technical assistance and information to State workers' compensation agencies, legislative committees and commissions on a continuous basis and worked closely with five States in arranging and participating in workers' compensation conferences for educational purposes and/or to focus on issues for possible legislative changes.

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Mine Safety and Health Administration

Fiscal year 1986 saw a decrease in the number of deaths and injuries in the mining industry, compared with the previous year. Metal and nonmetal mining reported 50 fatalities, the lowest total ever for a fiscal year, and coal mining had 92 deaths, the third lowest fiscal year total.

The Mine Safety and Health Administration (MSHA) conducted several special accident-reduction programs. One target for special emphasis was coal mines employing relatively few miners, which statistics show account for a disproportionate number of deaths in the industry. MSHA took action to alert small mine operators to the hazards and to make them aware of the different kinds of assistance available. Agency officials convened a number of informational meetings in the coalfields and distributed training materials.

The agency also expanded the campaign with industry and labor to address the problem of alcohol and drug abuse in mining. MSHA developed an audiovisual program consisting of slides and a script describing recent accidents in which substance abuse played a role. By the end of the fiscal year, a videotape and other materials on substance abuse were being prepared for release to the mining industry.

In August 1986, MSHA began a special effort to alert coal miners and operators to the dangers of methane explosions. Using the mobile explosion test gallery, agency specialists put on 24 demonstrations for a combined total of 8,500 people by fiscal year's end.

Also in the coal sector, MSHA continued its investigation into the disastrous fire that killed 27 miners at the Wilberg Mine near Orangeville, UT, on December 19, 1984. The in-mine portion of the investigation was completed on August 29, 1985; following complete analysis of the findings, the agency will publish its final report in FY 1987.

In the metal and nonmetal sector, specialists in MSHA's Program in Accident Reduction (PAR) worked closely with 25 operations having injury rates significantly higher than the national average. During fiscal year 1986, PAR operations achieved a 38 percent reduction in lost

workdays and a 25 percent reduction in their injury incidence rates.

As part of the Metal and Nonmetal activity's internal control program, evaluations were conducted of mine safety enforcement practices in the Western and Rocky Mountain Districts.

MSHA continued its comprehensive review of the metal and nonmetal mining standards. Final rules for mine ground control, loading, hauling, and dumping, and machinery and equipment were near publication at the close of the fiscal year.

During fiscal year 1986, MSHA assessed civil penalties for more than 100,000 violations of the Federal Mine Safety and Health Act and of mandatory safety and health standards.

Coal Mine Safety and Health

During fiscal year 1986, there were 2,640 underground coal mines and 3,921 surface mines and facilities under the jurisdiction of Coal Mine Safety and Health (CMS&H). The division conducted 45,561 inspections and investigations as well as 3,270 education and training activities at underground operations. There were 18,408 inspections and investigations and 1,293 education and training activities at surface mines and facilities. A total of 106,242 citations and withdrawal orders were issued to coal mine operators and contractors for violations of safety and health regulations. More than 1,600 health and safety inspection close-out conferences were held at the request of operators and labor representatives.

There were 92 coal mining fatalities in FY 1986, the third lowest fiscal year total in history. This total compares to 102 fatalities for FY 1985. The fatal incidence rate was .06 deaths per 200,000 employee work hours in FY 1986, about the same as in FY 1985. For fiscal year 1986, the incidence rate for all types of injuries in coal mining declined to 4.98 per 200,000 employee hours from 5.12 in FY 1985 and 5.48 in FY 1984.

The average number of coal mining employees (excluding office workers) was 180,688 in fiscal year 1986 as compared to 192,000 in fiscal 1985.

The Coal Mine Safety and Health Division investigated 218 complaints by miners who were allegedly fired or otherwise harrassed by mine operators for exercising

their statutory right to call attention to safety and health dangers where they work. The Division also opened 25 investigations into possible knowing or willful violations of coal regulations.

In an effort to provide more effective health protection for the miner and involve coal mine operators in the process of collecting samples when reduced dust standards are in effect, CMS&H developed and implemented in FY 1986 a revised quartz dust enforcement program. This program allows operators and miners to be more actively involved when a potential quartz problem exists. Specifically, it enables mine operators to participate, on a voluntary basis, in the collection of dust samples for quartz analysis, the results of which are subsequently used in the reduced dust standards process. The revised quartz program allows for the use of multiple samples to more accurately adjust the dust standard, for automatic re-evaluation of the current applicable standard, and for mine operators and miners' representatives to request special surveys by MSHA to determine if quartz is present in the work environment.

Coal mine safety and health specialists also established during FY 1986 a revised inspector noise sampling strategy. The main thrust of the new strategy is to conduct full-shift mine surveys instead of short-term surveys on coal miners, in order to better assess miners' exposure to noise in the workplace. Another important aspect of this new procedure is to recognize the use of personal hearing protection devices for the purpose of compliance where noise exposures are not adequately reduced through the use of current engineering controls.

Participation of coal miners in the X-Ray Surveillance Program has steadily declined over the past several years. During fiscal year 1985, MSHA training specialists gathered information from hundreds of miners to determine why they have or have not taken advantage of the free x-rays to detect the presence of pneumoconiosis (black lung disease). This information was sent to the National Institute for Occupational Safety and Health for compilation and review. The purpose of this study is to develop a film or video tape on the x-ray program to inform miners and mining-related organizations of the program and about the possible health effects of lung disease.

During fiscal year 1986, the CMS&H division continued activities of the Roof Evaluation-Accident Prevention

(REAP) program, including informational meetings, media coverage and the distribution of audio-visual materials, posters and stickers. In addition, MSHA expanded the Non-Fatal Days Lost (NFDL) Accident Reduction Program to an all-mine Accident Prevention Program. The expanded program includes all mines rather than only specific mines. The NFDL rate for underground mines at the end of fiscal year 1986 was 7.47 per 200,000 employee hours, a decrease from the 1985 fiscal year rate of 7.89. The NFDL rate for surface mines and facilities was 3.70, a decrease from 5.15 in FY 1985.

MSHA education and training specialists working in Coal Mine Safety and Health field offices, offered programs at mine sites across the country. For example, they initiated a special emphasis program to determine miners' competency in the use of the self-contained self-rescuer (SCSR) in case of an emergency.

The education and training specialists assist mine operators in identifying problems at a particular mine, evaluate and monitor mine operators' training plans and help to organize chapters of the voluntary Holmes Safety Association.

Five accidents resulting in multiple fatalities were investigated during the past fiscal year. On December 11, 1985, a methane explosion occurred at the No. 2 Slope, M.S.W. Coal Co., in Pennsylvania, resulting in three deaths. The following day, December 12, two miners were killed in a nearby mine when workers drilled into explosives during development of the Buck Mountain Slope, Mountain Top Coal Co. On February 6, 1986, three coal company employees and two employees of an independent contractor were fatally injured when a coal storage pile on which they were standing collapsed at the Loveridge Mine of Consolidation Coal Co. in northern West Virginia. Two other miners died when lightning struck near the blast area of the High Power Energy 20-Mile Surface No. 901 Mine in southern West Virginia on June 28, 1986. The last multiple fatality of FY 1986 occurred on July 9, 1986, at the Freeman United Coal Mining Co.'s Orient No. 6 Mine when a roof fall killed three foremen.

Recovery was completed of the area of the Wilberg Mine in Utah where fire killed 27 miners in December 1984. All electric equipment and cables in the fire area were removed from the mine for further investigation. This equipment was meticulously examined and tested and many

components were sent to specialized laboratories for further analysis as part of extensive data collection and study supporting eventual publication of a definitive report of the accident.

Metal and Nonmetal Mine Safety and Health

In fiscal year 1986, MSHA's Metal and Nonmetal Mine Safety and Health activity was responsible for promoting safety and health at some 419 underground mines and 10,708 surface mines, quarries, sand and gravel operations, and mineral mills.

Metal and nonmetal mine inspectors and specialists operate from six district offices, 12 subdistrict offices, and 55 field offices throughout the nation. This activity's workforce numbered 534 employees.

During the fiscal year, 18,699 complete regular inspections were made at metal and nonmetal mines and mills. Another 981 regular inspections were made at mines that were not actively producing—for example, operations with crews performing only maintenance work.

Enforcement personnel also made 237 inspections or investigations in fiscal 1986 in response to hazard complaints.

Metal and nonmetal mine inspectors issued 29,341 citations and orders during the fiscal year. Inspectors also made 5,979 compliance follow-up inspections to check for correction of previously identified violations.

A total of 921 other inspections were made at gassy mines, electrical installations, mines using hoist equipment, and mines engaged in shaft sinking.

At the request of management or labor, 293 health and safety post-inspection conferences were held with supervisory personnel to discuss inspectors' findings.

According to preliminary data, 50 fatalities occurred in metal and nonmetal mining during FY 1986—the lowest figure ever recorded for a fiscal year. This compares to 68 deaths in fiscal year 1985.

The fatal incidence rate was .03 per 200,000 employee hours for fiscal year 1986, compared to .04 for FY 1985. The all-injury incidence rate was 4.46 for FY 1986, compared to 4.24 for FY 1985. The average number of employees decreased by 7,000 and employee hours decreased by about 5 million.

Metal and nonmetal mine training specialists conducted 560 classes, meetings and visits to mine sites during the fiscal year.

Special investigations were made in response to 58 complaints of discrimination as prescribed by section 105 (c) of the Mine Safety and Health Act and 147 possible knowing and willful violations involving corporate agents.

Special emphasis programs continued during the fiscal year included the Program in Accident Reduction (PAR) and Compliance Assistance Visits (CAVs).

The Program in Accident Reduction (PAR) included 25 mining operations having injury rates significantly higher than the national average at the beginning of the fiscal year. Due to several mine closures, this number was reduced to 22.

Operations in the PAR program received extra attention in those areas found deficient through audits and review of the mine's safety program. From October 1985 through June 1986, PAR operations achieved a 38 percent reduction in lost workdays due to injuries and a 25 percent reduction in their injury incidence rates.

Inspectors made 1,401 Compliance Assistance Visits (CAVs) at the request of mine operators to mines and mills that were opening for the first time, resuming operations, opening new sections, or installing new equipment. Since these sites are not yet in operation, citations are not issued on these visits. On the next regular inspection, inspectors check to make sure that any conditions noted on the CAV have been corrected. During the fiscal year, inspectors wrote 9,310 notices at CAV visits.

MSHA provided guidelines for its metal and nonmetal mine inspectors covering the demolition of a structure containing asbestos, and the installation, stabilization, or removal of insulation and other asbestos material. The guidelines included sampling and identification procedures, applicable MSHA standards, and notification of the Environmental Protection Agency.

Mercury exposure has become of increasing concern in gold and silver mining. In order to make operators aware of the problem and to provide information on engineering controls for mercury sources, MSHA has organized a technical team which has been evaluating possible controls and will produce a pamphlet.

Lastly, as part of the Metal and Nonmetal activity's internal control program, evaluations were conducted of

mine safety enforcement practices in the Western and Rocky Mountain districts.

Office of Standards, Regulations, and Variances

The Office of Standards, Regulations, and Variances continued to review major groups of mine safety and health regulations. These reviews will bring MSHA's regulations up to date, clarify them, close gaps, remove needless burdens, and make the rule book easier to use.

To achieve its aims, MSHA worked to identify any duplicative or unnecessary standards. It sought to provide alternative means of compliance and to incorporate technological advances. Other goals include eliminating incorporations by reference and reducing the burden of recordkeeping and reporting on mine operators.

Included in its comprehensive review of the metal and nonmetal mining standards, the Standards Office held public hearings to discuss the gassy mine standards in October 1985; final rule development was close to completion at the end of the fiscal year. Additionally, final rules for ground control, loading, hauling, and dumping, and machinery and equipment were near publication at the close of the fiscal year.

Proposed rules were being prepared on three more metal and nonmetal sections: those on explosives, electricity, and air quality.

On November 11, 1985, MSHA published a preproposal draft of its radiation standards, and a proposed rule was near completion at the end of the fiscal year.

The review of underground coal mine safety and health standards also continued in FY 1986. MSHA published proposed rules for roof control on October 15, 1985, and explosives and blasting on May 9, 1986.

As part of the same review, preproposal drafts of the ventilation standards were available to the public on November 19, 1985, and electrical standards May 23, 1986.

Public hearings were held on the roof control proposals in February 1986.

MSHA continued to review public comments on the proposal covering approval of mining equipment which would permit the manufacturer or an independent laboratory to perform product tests. Using this procedure, the manufacturer could then certify that specific technical

requirements were met. In the area of equipment approval, the agency also published a proposal for updating fees associated with agency approval of mining equipment on April 16, 1986, and conducted public hearings on these two proposals in July and August 1986.

The proposal for the approval of explosives and sheathed explosive units was near publication at the end of the fiscal year, as were proposals addressing the implementation of the statutory provision covering "pattern of violations" and proposals establishing a mine plan appeal process. The agency continued to review regulatory issues affecting the use of diesels in underground coal mines.

Office of Assessments

During fiscal year 1986, MSHA assessed civil penalties for 129,924 violations of mandatory safety and health standards, a figure consistent with fiscal 1985. Total penalties assessed were $12 million, a five percent increase over the previous year. Collections increased from $9.6 million in 1985 to $10.1 million in fiscal 1986. This represents 85 percent of the civil penalties assessed without any need for collection action. Penalties that become past due are referred to a commercial collection agency under contract with the agency. Penalties that are not collected are referred to the Office of the Solicitor for enforcement in Federal court.

Assessments continued to be issued promptly. All citations were reviewed for consistency and completeness before issuance of the civil penalty assessment.

Mine operators requested hearings with the Federal Mine Safety and Health Review Commission on 3,418 violations, 2.6 percent of the total assessed. This represents a slight increase over the previous fiscal year.

Technical Support

During fiscal year 1986, Technical Support personnel responded to, or assisted other MSHA personnel in the investigation of, three mine emergency situations. In addition, Technical Support continued to furnish technical assistance at the Wilberg Mine. This consisted of on-site gas analysis, monitoring of analytical instrumentation installed in the mine, and laboratory testing of material recovered from the fire area.

Technical Support personnel conducted more than 530 in-mine and field investigations during FY 1986. Included were 73 investigations and studies of ground or roof control problems, 96 noise control investigations, and 55 ventilation studies. Also, non-destructive tests of 57 separate hoist ropes at 24 locations resulted in recommendations that six hoist ropes be removed from service. The acquisition of the latest state-of-the-art non-destructive testing equipment greatly facilitated the hoist rope testing program.

Technical Support processed more than 123,000 respirable coal mine dust samples received from mine operators or from MSHA inspectors as part of mine inspections. Additionally, 2,120 respirable dust filter cassettes were examined and weighed as part of MSHA's Quality Control Surveillance Program of filter cassettes supplied to the mining industry.

In addition to the respirable dust samples, approximately 17,000 other samples were analyzed in Technical Support laboratories. These included mine gas samples, mineral samples analyzed for quartz content, samples of liquids from mines, and analyses for fiber content and asbestos determinations.

During the fiscal year 120,000 occupational accident, injury, and illness reports were processed and analyzed with results being distributed to MSHA management and the mining industry. Seven reports analyzing specific accident types or trends were published, as were 12 pictorial Hazard Alerts.

In a major move, the MSHA accident and injury data systems were transferred from the National Oceanographic and Atmospheric Administration (NOAA) computer facility in Boulder, CO, to the Department of Energy Idaho National Engineering Laboratory (DOL/INEL) facility at Idaho Falls, Idaho. The transfer was accomplished without major interruption in the MSHA accident and injury data processing operations.

The MSHA Approval and Certification Center completed 4,674 approval actions on new application requests received from manufacturers mining equipment, materials, and instruments. At the beginning of the fiscal year there was a working inventory of 765 actions; at the close of the fiscal year this inventory totaled 513 pending actions.

To alert miners and others to the dangers of methane explosions, the Mobile Explosion Test Gallery initiated a

series of demonstrations before audiences at various locations. A total of 24 demonstrations before combined audiences of 8,500 people had been conducted by the end of the fiscal year.

An interagency task force, led by Technical Support with representation from other MSHA organizational units, the National Institute of Occupational Safety and Health (NIOSH) and the Bureau of Mines made an in-depth study of the use of diesel-powered equipment in underground coal mines. The task force report, presented to the Assistant Secretary of Labor for Mine Safety and Health, concluded that the unrestricted and unregulated use of diesel-powered equipment in underground coal mines posed significant safety and health hazards. The report recommended that MSHA develop and promulgate rules and regulations relating to the approval, maintenance and use of diesel-powered equipment for fuel storage and handling and addressing mine ventilation and mine environmental sampling in underground coal mines where diesel-powered equipment is used.

Educational Policy and Development

MSHA's Office of Educational Policy and Development (EPD) coordinated policy and programs on mine safety and health training during fiscal year 1986. This office also supervised the National Mine Health and Safety Academy in Beckley, WV, administered the State Grants Program, and provided support to the Holmes Safety Association.

Numerous special awareness programs were developed over the year. A program to focus attention on the growing problem of substance abuse in the mining industry was initiated. The program consists of slides/illustrations and abstracts describing accidents in which alcohol or drug abuse may have been a factor. Programs were developed to alert small-mine personnel to the high rate of fatal accidents in their mines and to help the public understand the dangers of exploring abandoned and idle mines and quarries. Procedures for evaluating the effectiveness of industry safety and health training specialists, the Roof Evaluation-Accident Prevention (REAP) program, and Self-Contained Self-Rescuer (SCSR) training were established.

Interpretations of the Part 48 training regulations were addressed. Assistance regarding the implementation of the

regulations was provided to industry personnel as well as MSHA district managers.

During fiscal 1986 more than 20,000 people, including 50 foreign visitors from 13 countries, participated in programs conducted at the Mine Health and Safety Academy.

Cooperative efforts were expanded and included joint efforts with: the Occupational Safety and Health Administration (OSHA) in presenting a crane hoisting program; the Bureau of Mines on research and distribution of training materials; the State of Kentucky in developing an auger mining program and substance abuse program for the Salt Institute, and the State of Ohio and the State of West Virginia on special programs for inspectors. A special health and safety program was given to a group of unemployed miners from Kentucky.

Educational Policy and Development continued to provide effective publications for the mining industry. Safety manuals were developed for the annual Winter Alert campaign, mine escapeways, and mine ventilation. A programmed instruction text was developed for industrial hygiene. Guidelines for instructors were issued for on-the-job training modules in cement and underground coal. In all, more than one million pieces of training materials were distributed to the mining community.

Forty-six states and the Navajo Nation took part in MSHA's State Grants Program, which funds miner training and other special emphasis programs relating to safety awareness. A total of $4,948,000 was granted for the fiscal year and 125,000 miners were trained in MSHA-supported programs.

The Holmes Safety Association, named for Joseph A. Holmes, first director of the Bureau of Mines, a voluntary organization supported by EPD, continued to develop and provide materials for use during safety meetings held by labor and management throughout the Nation's mining regions.

Also with EPD support, the Holmes Safety Association continued to promote safety and conservation of health and life in the mining industry.

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Pension and Welfare Benefits Administration

Elevation of the Office of Pension and Welfare Benefit Programs from a subordinate office to the sub-cabinet level and upgrading the principal officer from administrator to assistant secretary highlighted several management initiatives in FY 1986 designed to protect pension funds covered under the Employee Retirement Income Security Act.

The new agency—the Pension and Welfare Benefits Administration (PWBA)—also streamlined the structure and organization of its enforcement component and improved its interaction with other Federal agencies involved in employee benefit plan matters in an effort to alleviate duplication of effort and to improve information sharing. Appointed as the first assistant secretary for pension and welfare benefits was Dennis M. Kass. David M. Walker was named deputy assistant secretary.

In enforcement activity during the year, the agency recovered more than $100 million through voluntary settlements and court actions and conducted 47 criminal investigations. Of the total amount recovered by the Department, $22.6 million represents the amount restored to the Southern Nevada Culinary and Bartenders Pension Trust.

Of particular interest during the year were the effects on the benefit security of plan terminations involving asset reversions. In order to examine and recommend specific legislative or administrative actions, the Secretary's Advisory Council on Employee Welfare and Pension Benefit Plans formed a bipartisan task force to study issues relating to plan terminations in which excess assets revert to the sponsors of plans covered by ERISA. Its recommendations included the establishment of a system of direct access to surplus assets without termination, and the requirement of advance notification of plan termination to participants, along with an explanation of the economic impact of the transactions.

Regulatory activities during the year dealt with clarifying two significant issues under ERISA. One concerned the fiduciary responsibility provisions of ERISA to "soft dollar" and directed commission arrangements. The other

clarified the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985 that provided extended health coverage for employees and their families.

The agency also announced that it was extending the expiration date of the transitional rule under the proposed plan assets regulation to provide plan sponsors and fiduciaries sufficient time to assess the provisions of the final regulation before expiration of the transitional rule.

In FY 1986, the agency issued two significant advisory opinions regarding the use of performance based compensation arrangements by investment managers.

In the area of reporting reduction, the agency proposed revisions to the annual 5500 reporting series which would reduce the regulatory burden imposed on plan administrators, especially small plans.

Research projects completed during the year revealed that employer provided health insurance for retirees is an important supplement to Medicare and other public health programs for an estimated 4.3 million elderly persons and their dependents. Another study compared private ERISA plans with other institutional investors and capital markets. In connection with the pension plan termination question, another research project indicated that most active participants in plans that terminate are covered in successor defined benefit plans, thus assuring that they do not lose expected benefits when employers terminate overfunded plans to recover excess pension assets.

Office of Labor-Management Standards

During fiscal year 1986, the Office of Labor-Management Standards (OLMS) placed continued emphasis on a well-balanced program of civil and criminal enforcement of the provisions of the Labor-Management Reporting and Disclosure Act (LMRDA) and the Civil Service Reform Act (CSRA). A wide range of liaison/compliance assistance programs designed to promote greater understanding of and compliance with the provisions of the Act were provided to international and national labor organizations. These initiatives are consistent with Labor Secretary Brock's philosophy of openness with the labor movement through cooperative efforts that effectively make the unions partners in the process and actively involve union leaders as part of the solution.

A more ambitious compliance assistance program was initiated in FY 1986 by OLMS to promote voluntary compliance with the LMRDA and complement its civil and criminal enforcement programs. Each of our 28 field offices conducted at least two large reporting and/or election seminars for a particular affiliation or on a geographical basis. Participants included union members and union officers at the international, intermediate and local levels. A comprehensive program is being developed to maintain contact with top level international and national union officials to: (1) provide ongoing assistance in order to improve compliance with the LMRDA by parent bodies and affiliated unions and (2) develop cooperative arrangements whereby common civil violations of the LMRDA such as delinquent and deficient reporting by affiliated unions will be addressed at the international/national union level, thereby reducing the need for OLMS investigations. More effective channels of communication, including the publication of a periodic report to international and national union presidents, will be established with regard to LMRDA-related matters, including policy changes, court decisions and new compliance assistance programs.

To enhance OLMS civil and criminal enforcement efforts, new Compliance Audit Program (CAP) operating procedures were implemented nationally in fiscal year

1986. This new program was the result of a comprehensive internal evaluation, including statistical analyses, studies of closed cases, and comments from OLMS investigators and field managers. The CAP is a streamlined audit/investigative program designed to (1) detect LMRDA civil and criminal violations in a minimum amount of time through specialized audit and investigative techniques (2) provide compliance assistance directly to union officials. During the fiscal year, OLMS completed 944 compliance audits. As a fallout from these audits, 140 embezzlement cases were opened. OLMS believes CAP has had an immeasurable criminal deterrent value which we believe is related proportionally to the number of audits conducted. In addition to the embezzlement cases, CAP reviews exposed other types of violations such as deficient reports, inadequate record keeping, and bonding violations. In most instances, these violations were corrected expeditiously by the unions involved. The increased enforcement presence of OLMS throughout the labor movement should, like any audit program, result in improved compliance.

The International Compliance Audit Program (I-CAP), a companion program to CAP, was primarily designed to determine compliance with the provisions of the LMRDA by the international/national unions which have over $4 billion in annual receipts. Fifty-eight I-CAP audits have been conducted since 1982, including 11 in fiscal year 1986. As with CAP, the I-CAP has uncovered many violations pertaining to LMRDA requirements. Most of these violations were remedied through voluntary compliance by the unions involved.

During fiscal year 1986, OLMS closed 408 embezzlement cases involving all types and sizes of unions located throughout the country. Included in this figure are cases referred to the U. S. Attorney for legal action; cases which the U. S. Attorney declined to prosecute for a variety of reasons such as the dollar amount involved, the age or health of the subject, or the fact that the subject had made restitution to the union, and cases where no violations were found. Most of these cases were opened on the basis of complaints received or as a result of the Compliance Audit Program (CAP).

During the fiscal year, 157 indictments and other criminal actions, amounting to approximately $1.9 million in embezzled funds, were initiated and 151 convictions and pretrial diversion agreements were obtained. This figure

represents the highest number of convictions obtained in one fiscal year since the passage of the LMRDA and continued the steady upward trend of OLMS' criminal statistics over the last four years. For fiscal year 1986, OLMS obtained criminal prosecutions in cases involving a few thousand dollars embezzled by part-time union employees up to multiple indictment cases which involved defendants who participated in embezzlement schemes such as selling union memberships for personal gain in amounts up to half a million dollars. For example, a case worked by OLMS' New Orleans District Office resulted in the conviction of two union officers for conspiracy to embezzle union funds in the amount of $244,403 and embezzlement of union funds in the amount of $221,405. Approximately $1.18 million in embezzled funds was recovered during fiscal year 1986 and $48,570 in fines were imposed. At the end of the year, 149 criminal actions were still pending.

In the civil enforcement area, OLMS received 161 election complaints and 15 trusteeship complaints during the year. Forty-four civil actions were filed. Major election investigations involved the United Steelworkers of America, District 35 director, and the United Auto Workers, Region 5 director, both international officer positions. These two investigations resulted in the Department seeking to set aside the election of these positions through court action. Additionally, OLMS supervised 49 union officer elections, including Local 1199, Hospital and Health Care Employees, in New York City, which involved the preservation of rights for more than 80,000 union members. For the Local 1199 supervised election, 72 OLMS employees worked at 92 polling sites with 39,106 votes cast. This was the largest single programmatic undertaking by OLMS during FY 1986.

Throughout FY 1986, continued emphasis was placed on obtaining proper compliance with Title II of the LMRDA. In this regard, work continued on the review of employer and consultant reports. During the year, 340 consultant reports and 263 employer reports were reviewed to identify delinquent and deficient reports, and to obtain proper compliance.

Several new publications for use by our clientele were introduced in FY 1986. All employers, labor relations consultants and bonding companies that have ever filed required reports under the LMRDA are listed in three new

publications that were printed and distributed during the year: the *Register of Reporting Employers 1986* lists the names of companies which have filed employer reports; the *Register of Reporting Labor Relations Consultants 1986* lists the names of persons and firms which have filed labor relations consultant reports, and the *Register of Reporting Surety Companies 1986* lists the names of insurance and surety companies which have filed surety reports. OLMS published a new *Register of Reporting Labor Organizations*, available to the public, which contains identifying information on the approximately 48,000 unions which file financial reports annually. Six existing OLMS explanatory compliance assistance pamphlets and three sets of agency regulations were revised and updated to improve their usefulness. Two new pamphlets, *All About OLMS* and *Public Disclosure Under the LMRDA*, have been developed to address identified compliance assistance needs.

Nationwide training of OLMS field and national office personnel continued during FY 1986 in line with OLMS policy of improving the overall quality of audits and civil and criminal investigations.

Work began on a new video library which will be assembled at the national office to allow dissemination of specialized courses to field offices on an as-needed basis so that individual needs can be addressed immediately and inexpensively.

Bureau of Labor-Management Relations and Cooperative Programs

During fiscal year 1986, the Bureau of Labor-Management Relations and Cooperative Programs (BLMRCP) increased activities to promote greater participation and cooperation in labor-management relations and encouraged the development of quality of work life and employee involvement programs. The Bureau analyzed and reported on issues in the field of labor-management relations, provided extensive research on industrial relations, conducted training seminars on the cooperative labor-management concept, administered employee protections programs for those adversely affected by Federal legislation, and published case studies of successful cooperative efforts in the labor management area.

Cooperative Programs

In FY 1986 the Bureau conducted or cosponsored 52 conferences and symposia throughout the country in which labor and management representatives learned about the potential of joint cooperative activities to increase productivity, efficiency, and quality. Four of the most significant events—three regional conferences at Lake-of-the-Ozarks, MO, Tampa, FL, and Las Vegas, NV, and the Third National Labor-Management Conference, cosponsored by the Federal Mediation and Conciliation Service in Washington, DC—reached more than 3,000 practitioners.

Of the 52 conferences, several dealt with specific issues, including white collar productivity, competitiveness in world markets, semiautonomous work groups, gainsharing, and education and training. Other conferences focused on issues significant to specific industries, including the rubber, health care, and printing industries. Still other conferences reached highly specialized audiences, including a conference for Department of State foreign service officers, cosponsored with the Foreign Service Institute; a Federal sector conference, cosponsored with the National Aeronautics and Space Administration, and several State and city conferences directed to public employees. Addi-

tionally, the Bureau cosponsored the spring meeting of the Industrial Relations Research Association, the principal professional association of researchers and practitioners interested in developing and disseminating knowledge in the field of labor-management relations.

The remaining conferences, which were cosponsored by local area labor-management committees, local Industrial Relations Research Association chapters, labor-management councils, and quality of work life centers, brought together experienced practitioners with one or more teams of labor and management representatives. Each team related experiences in joint cooperation. These forums provided a valuable opportunity for dialogue between practitioners of cooperative labor-management relations and audience members who were interested in cooperation but lacked the basic knowledge of how to begin.

Finally, the Bureau developed a model workship for use by area labor-management committees and State organizations to assist them in fostering and developing effective area labor-management committees (ALMC). The Bureau conducted four symposia on the ALMC model.

Legislative Affairs

In line with the Department's objective to increase the ability of American workers and companies to compete successfully in domestic and world markets through labor-management cooperation, the Bureau has embarked on a comprehensive study of possible impediments to labor-management cooperation arising from the framework of laws and collective bargaining traditions and practices. In June, Deputy Under Secretary Stephen I. Schlossberg issued a report on the subject, "U. S. Labor Law and the Future of Labor-Management Cooperation," coauthored with Steven Fetter. The report, which was widely distributed to labor and management officials, attorneys, labor relations practitioners, and law, industrial relations and business school professors, has stimulated much interest and comment. The goal of the two- to three-year project is to bring about discussion on whether laws, or their interpretations, impede cooperative efforts and, if so, to determine whether a consensus exists on ways to achieve a climate more hospitable to cooperative experiments.

Bureau staff assisted the 21-member Task Force of Economic Adjustment and Worker Dislocation named by Secretary Brock to "launch a much-needed, comprehensive inquiry into problems faced by American industry and workers in adjusting to the certainty of technological change, foreign competition, and other market forces." The task force, which consisted of representatives of government, labor, industry, and academia, expected to report its findings to the Secretary by the end of December 1986.

Other legislative issues receiving attention by Bureau staff included proposals on employee protection, dispute resolution, parental leave, polygraph testing, and amendments to labor relations laws.

Bureau officials and staff continued to participate in departmental activities in international labor relations by preparing background and position papers relating to program activities of both the Organization for Economic Cooperation and Development (OECD) and the International Labor Organization. Associate Deputy Under Secretary John Stepp was a member of the United States delegation to the eighth Inter-American Conference of Labor Ministers, and he represented the U. S. at the seventeenth session of the OECD's Working Party on Industrial Relations.

Industrial Relations

Through a combination of weekly reports and briefing papers, Bureau staff kept the Secretary and other key government officials apprised of the status of significant negotiations and related industrial relations developments.

Collective bargaining agreements expired in several key areas during the fiscal year, including steel, where the Bureau monitored negotiations which occurred on a nonindustry-wide basis for the first time in nearly three decades, and telecommunications, where the parties engaged in their first round of bargaining since divestiture. The Bureau also followed negotiations in the aerospace, agriculture and heavy equipment, airlines, aluminum, copper, longshoring, metal containers, and petroleum refining industries.

Bargaining occurred also in the railroad industry, where negotiations continued over contracts that became amendable in mid-1984. The Bureau provided information

to a Presidential emergency board authorized under the Railway Labor Act to investigate and report on rail industry disputes involving six unions. That board issued its report and recommendations in August, and the parties involved reached tentative agreements before the fiscal year ended. Elsewhere in the railroad industry, the Bureau monitored a strike at the Maine Central Railroad that not only resulted in the establishment of a Presidential emergency board, but also led to Congressional action aimed at resolving the dispute.

Research And Analysis

During FY 1986, the Bureau's library expanded to include more than 1,600 books and articles, most of which have been annotated and computerized for easy retrieval. At year's end, the library began collecting references on current issues, including work and family life dilemmas, the aging work force, and the workplace problems of drug and alcohol abuse.

The Bureau's research program awarded five contracts during the year and extended two others. Four of the new contracts cover a variety of industries—steel, railroad, automobiles, and construction—and include examinations of cooperation in plant closings and technological change. The fifth new contract provides partial funding to Columbia University for a study of human resource policies and practices as they relate to the economic performance of a firm.

Two contracts were extended. Massachusetts Institute of Technology researchers have developed a wealth of knowledge in their study about the institutionalization of changes in industrial relations and need more time for analysis. The case study of Eastern Airlines was extended to allow the researchers time to account for the impacts of recent financial problems and subsequent sale of the airline.

Near the end of the fiscal year, the Bureau completed two studies and a third was in the final stages. Studies about a tripartite effort among labor, management, and the University of Alabama to prevent a plant closing and about pay-for-knowledge compensation systems were completed and ready for publication in early fiscal year 1987. Also nearing completion was a study of cooperation at the Somerville, NJ, plant of Ethicon, Inc.

Because of its traditional close links with the academic community, the Bureau will carry forward the Department's program advocating the adoption of a basic labor-management relations/cooperation course in the core curricula of business schools and other institutions of higher learning. In addition, the Bureau is involved in a program to help the construction industry cooperatively address the problems facing labor and management.

The Bureau continued to participate in international activities involving both the Organization for Economic Cooperation and Development and the International Labor Organization. Bureau staff prepared position papers and talking points for speeches by departmental executives. Additionally, Bureau staff continued to be actively involved in the research community, participating in the Industrial Relations Research Association at national and local levels, in Columbia University's Seminar on Labor, and meeting with directors of university industrial relations centers and with the American Assembly of Collegiate Schools of Business.

Employee Protection

During FY 1986, the Bureau completed approximately 930 certifications for projects funded under the Urban Mass Transportation Act of 1964, as amended. Under Section 13(c) of the Act, the Secretary must certify that agreements are in place to protect the rights of transit system employees when a State or local body uses Federal funds to acquire or improve that system. Only when these certifications are made can the Department of Transportation release funds for proposed projects.

While the number of certifications dropped slightly during the year—from 1,140 last fiscal year—the difficulty in completing cases rose dramatically in many cases. The Department found it necessary to depart from its traditional role of mediator and technical advisor, and was forced instead to act as arbitrator, making final determinations on provisions that would meet Section 13(c) requirements when parties were unable to agree upon an appropriate procedure. This happened in over a dozen situations. These determinations enabled the Department to ensure that certifications previously considered "conditional"—those that did not fully meet all provisions—would now meet all requirements of the Act.

Another factor making the certification process more complex was UMTA's recent initiative to increase private-sector involvement in providing transportation services. Apparent conflicts between UMTA private-sector policy and local collective bargaining positions increased the frequency of the parties' proposals to supplement existing 13(c) arrangements with specific language addressing the impact of new projects. It appeared that this trend would continue and even escalate during fiscal year 1987.

Industrial Adjustment Service

The Industrial Adjustment Service (IAS) held six workshops in five States for State officials involved in assisting dislocated workers.

Additionally, the IAS conducted two orientation workshops to introduce States to the dislocated worker strategies used by the Canadian Industrial Adjustment Service. Representatives from 34 States attended; 19 submitted proposals to participate in a program to adapt the Canadian model in their states; 9 states were selected for on-the-job training with the Canadian Industrial Adjustment Service.

The IAS worked with AT&T, the Communications Workers of America, and the International Brotherhood of Electrical Workers to help establish joint labor-management committees to address mass nationwide layoffs; cosponsored a workshop for leaders of the United Rubber Workers and company officials to discuss successful labor-management strategies to reduce the impact of dislocation; and conducted an adjustment workshop for representatives of 13 unions, 4 State AFL-CIO federations, and 2 State Department of Labor coordinators.

Finally, the IAS helped numerous labor and management officials establish joint labor-management committees to reduce the effects of dislocation caused by potential or actual plant closures.

Airlines Rehire Program

The Rehire Program authorized by the Airline Deregulation Act of 1978 became effective on January 27, 1986. The program provides for preference in hiring for certain more senior airline employees who have been furloughed

or terminated during the 10-year period following enactment of deregulation.

The Bureau reviews and decides claims for basic eligibility under the program and provides general guidance to employees, unions, and airlines on their rights and duties under the program. The Rehire Program also provides for a national list of jobs available in the airline industry. The job list is compiled by the Interstate Job Bank in Albany, NY, under a contract with the Employment and Training Program.

Redwood Employee Protection Program

During fiscal year 1986, activity in the Redwood Employee Protection Program (REPP) concentrated on appeal determinations and pension and health claims. In FY 1986, 25 new appeals were made and 84 determinations issued. At the end of the year, 98 appeals were pending. A total of 228 files were reviewed for pension determinations; 164 awards of benefits were made to claimants. The remaining 64 files reviewed consisted of denials of benefits or claims not to be made until the claimants reach the age of 65 or are severed from the program.

The program processed 1,469 health and welfare claims and approved approximately $550,000 in combined pension and health and welfare benefits for FY 1986.

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Veterans' Employment and Training

Two significant initiatives were established during fiscal year 1986 by the Office of the Assistant Secretary for Veterans' Employment and Training (OASVET) to help veterans find employment and training. These diverse efforts were in addition to regular activities and programs of the agency.

The first was started in July 1986 with the implementation of the Jobs for Homeless Veterans demonstration project slated for operation in 10 cities throughout FY 1987. The cities were: Baltimore, Boston, Detroit, Seattle, Denver, Los Angeles, San Antonio, New Orleans, Atlanta, and Fort Lauderdale, FL. The project will help find meaningful employment and training for homeless veterans who wish to participate and also arrange for appropriate medical, mental and financial assistance by establishing linkages with public and private service providers.

In addition, it was recognized that the primary employment and training service delivery system for veterans, the public Job Service, could enhance its performance through specialized training of its staff. To this end, the National Veterans Training Institute (NVTI) was established by the OASVET in cooperation with the Colorado Department of Labor under joint agreement with the University of Colorado. Beginning in January 1987, it is planned that NVTI will train 1,200 to 1,400 staff members of various State Job Service Offices. Such training will provide skill reinforcement and program information leading to more effective job performance by Local Veterans Employment Representatives, Disabled Veterans Outreach Program specialists, and other selected Job Service staff members serving veterans.

Title IV-C Grants

National veterans' employment programs are administered by the Office of the Assistant Secretary for Veterans' Employment and Training under Title IV-C of the Job Training Partnership Act (JTPA). During Program Year 1985 (July 1, 1985 through June 30, 1986), grants were

awarded to 89 recipients, totaling $7.74 million, to provide direct counseling, training and job placement of Vietnam-era, disabled, and recently separated veterans. Virtually all States received grants, with 80 percent of the funds made available on a matching fund basis. Veterans also received job training services under other JTPA programs: e.g., Title II-A for the economically disadvantaged and Title III for retraining dislocated workers.

Specialized Veterans' Services

Under these programs, established by legislation, the Office of the Assistant Secretary for Veterans' Employment and Training awards grants to States to fund the approximately 3,250 specialized veterans' services positions nationwide. Of those positions, about 1,900 are Disabled Veterans Outreach Program specialists (DVOPs) who provide job referral and placement services, promote and develop job and training opportunities with employers, arrange for necessary job counseling and testing, and provide outreach through veterans' service organizations and community agencies. Each DVOP specialist provides services only to eligible veterans in accordance with the law (38 U.S.C. 2003A). They are State employees stationed in local Job Service offices and Veterans Administration facilities such as Vet Centers and VA hospitals.

About 1,350 of these positions are Local Veterans' Employment Representatives (LVERs) who, through supervisory activities and cooperative efforts with local office staff, help assure that Job Service offices and staff provide priority services to veterans in employment and training programs. They maintain regular contact with employers, veterans' service organizations, and community agencies to promote and foster assistance to eligible veterans. The DVOPs and LVERs were instrumental in placing nearly 470,000 veterans in jobs during the period July 1, 1985, through June 30, 1986. (Job Service operates on the basis of a July 1 through June 30 Program Year.)

Veterans' Reemployment Rights

Staff efforts to provide veterans, reservists and National Guard members with reemployment assistance continued throughout FY 86. During this period, 1,739 reemployment

rights cases were opened, 1,748 were processed, 595 were pending, and 33 were referred to the Department of Justice for resolution. About 98 percent of the cases were resolved without recourse to litigation.

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Office of the Solicitor

During fiscal year 1986, the Office of the Solicitor, which is responsible for all legal aspects of the Department's programs, continued in its function of representing the Department in litigation and/or litigation support functions before the Supreme Court, the courts of appeals, and the federal district courts. The national office received approximately 11,251 cases, and 18,774 cases were received by the field offices. (The decrease in case intake for the national office from fiscal years 1985 to 1986 is attributable to the huge volume of asbestos cases that were received for processing during the previous fiscal year.)

The Solicitor's Office received three important victories in the Supreme Court, and was also successful in obtaining the Court's review of several other significant cases.

In other litigation, the Solicitor's Office received a $7.6 million recovery of back wages in a Fair Labor Standards Act case, as well as a bankruptcy settlement in one of the Department's ongoing ERISA cases, which resulted in another $9 million in cash, for a total figure of $27.7 million in restitution for that case alone.

In addition, the Philadelphia regional office was instrumental in the investigation and pre-trial preparation of a case in which the Occupational Safety and Health Administration had issued citations with the largest proposed penalties in its 15-year history.

Civil Rights

During the fiscal year, the Division of Civil Rights participated in litigation, regulatory work, and the development of legal opinions involving issues arising under Executive Order 11246, Sections 503 and 504 of the 1973 Rehabilitation Act, the affirmative action provisions of 38 U. S. C. 2012 of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRA), and Title VI of the Civil Rights Act of 1964. There was a significant increase in opinion and review work under the Job Training Partnership Act (JTPA), and litigation activity continued under the Comprehensive Employment and Training Act (CETA).

A significant portion of the division's litigation resources was devoted to two major cases arising under

Executive Order 11246. In *OFCCP v. Harris Bank*, 78-OFC-2, a major pattern and practice sex and race discrimination case, a remand trial was conducted and post-hearing pleadings were filed. At year's end, the case was still pending before the chief administrative law judge. In *OFCCP v. St. Regis Paper Corp.*, 78-OFC-1, a pattern and practice sex discrimination case, the company filed extensive exceptions to the administrative law judge's recommended decision in our favor, and we filed responses to those exceptions. The matter was pending before the Secretary at the end of the fiscal year. Also pending were two CETA cases, *Bisaillon v. New Bedford Consortium*, 83-CET-118, (in which the division filed a brief contesting the complainant's claim of sex discrimination), and *In the Matter of Passaic County*, 78-CET-112, (which raises the issue of whether JTPA funds may be cut off as a sanction to enforce a CETA back pay award).

During the fiscal year, the division prevailed against a number of challenges to the Office of Federal Contract Compliance Program's (OFCCP) activities under Executive Order 11246, Section 503, and 38 U.S.C. 2012. In *Solomon v. OFCCP*, C.A. No. 3-85-1445 (N.D. Tex. Nov. 27, 1985), we obtained summary judgment in a mandamus action brought by an individual alleging harm caused by OFCCP's failure to act in a timely fashion on his complaint. We also obtained dismissals of two defensive actions in the U.S. courts of appeals, *Green v. Department of Labor*, No. 85-1492 (10th Cir. Feb. 12, 1986) (a mandamus action), and *Gulf Oil Corp. v. Brock*, No. 80-1127 (D.C. Cir. Dec. 13, 1985) (a reverse Freedom of Information Act case). Favorable decisions were also received in *Andrews v. Conrail, et al.*, C.A. No. IP83-1888C (S.D. Ind. Jan. 11, 1986); *Berkosky v. DOL*, C.A. No. 79-1633-WPG (C.D. Cal. Feb. 21, 1986); *Manzo v. DOL*, C.A. No. 86-3247 (C.D. Cal. Sept. 12, 1986); *Thompson v. DOL*, C.A. No. 85-3875 (E.D. Pa. May 19, 1986); *Burnett v. Brock*, C.A. No. 85-1897A (N.D. Ga. March 31, 1986).

In *Andrews*, the plaintiff challenged OFCCP's "no violation" findings on his handicapped complaint as an arbitrary and capricious exercise of agency discretion. The district court held that it had no jurisdiction over OFCCP's prosecutorial discretion decision not to take enforcement action. The *Manzo* court dismissed the complaint based on plaintiff's failure to exhaust administrative

remedies. In *Burnett*, the plaintiff challenged OFCCP's decision that a newspaper was not a covered government contractor at the time of the alleged violation. Burnett claimed that various advertising orders should be aggregated for coverage purposes of his former employer. The district court dismissed, holding that, without a master agreement, the purchase orders could not be aggregated for coverage purposes. In *Thompson v. DOL*, C.A. No. 85-3875 (E.D. Pa.), the district court dismissed as moot a challenge to OFCCP's decision to stay the processing of certain Section 503 complaints pending a decision by the Employment Standards Administration (ESA) Deputy Under Secretary in *OFCCP v. Western Electric*, 80-OFC-29. Processing of Thompson's complaint had resumed at the time of the hearing. Finally, in *Shiver v. U.S.*, C.A. No. 85-C-2878 M (N.D. Ala. June 30, 1986), the district court held that OFCCP's decision that VEVRA had not been violated was an unreviewable exercise of prosecutorial discretion. Appeals in the *Andrews*, *Burnett*, and *Thompson* cases were pending at the end of the fiscal year.

The division prevailed in two CETA cases. In *Tatum v. U.S. Dept. of Labor*, No. 83-7201 (Nov. 25, 1985), the Ninth Circuit upheld the Secretary's decision that the plaintiff was not a victim of race and sex discrimination while participating in a CETA-funded program at the University of Nevada. In *Moski v. Angrisani*, C.A. No. 3:85-692-8H (D.D.C. Nov. 29, 1985), the district court granted the Department's motion to dismiss for failure to exhaust administrative remedies. Moski had alleged constructive discharge from a CETA-funded program because of harassment on the basis of sex, national origin, and handicap.

For approximately five years, OFCCP has been subject to the terms of a consent degree in *C.W.A., et al. v. Costle, et al.*, C.A. No. 77-1750-AJZ (N.D. Cal.). Dismissal of the decree was obtained on March 19, 1986.

In five new defensive cases, motions to dismiss or for summary judgment were filed. In both *Smith and Wesson v. DOL*, C.A. No. 85-0427-F (D. Mass. Nov. 26, 1985) (alleging improper extension of the 180-day charge filing rule), and *USAA Federal Savings Bank v. Brock*, C.A. No. 86-1660 (D.D.C. June 17, 1986) (challenging Executive order coverage of deposit and share insurance contracts), the division asserted that exhaustion of administrative remedies was a prerequisite to suit. Motions to dismiss

were also filed in *Clouatre v. U.S.*, C.A. No. 86-1546 (E.D. La. April 29, 1986), and *Poullard v. M & M Builders, et al.*, C.A. No. A 82-506 (D. Alaska Sept. 11, 1985). Both cases turn on the issue of whether OFCCP's exercise of prosecutorial discretion is subject to judicial review. The fifth pending motion was filed in *Ozark Air Lines v. Department of Labor*, C.A. No. 86-1396-C-3 (E.D. Mo. July 16, 1986), a request for Administrative Procedure Act review of a decision by the ESA Deputy Under Secretary holding that Ozark violated Section 503 by refusing to hire a hearing-impaired individual as an aircraft mechanic.

The division had three cases in active trial preparation. In *Bennita Davis, et al. v. Mobile Consortium, et al.*, C.A. No. 70-0167-C (S.D. Ala.), a class action CETA defensive case, the Department's handling of plaintiff's CETA complaint alleging race and sex discrimination was challenged. Ms. Davis and members of her class sought monetary damages from the Department and prospective relief under the JTPA program. *OFCCP v. Tyson Foods*, 86-OFC-8, was an enforcement action under Section 503 involving the allegedly discriminatory discharge of an employee with psychiatric problems; *OFCCP v. Western Electric*, 80-OFC-29, was a Section 503 enforcement case which was remanded for hearing by the Deputy Under Secretary for ESA.

The division was involved in a number of departmental regulatory activities during the fiscal year. Assistance was provided to three agencies, OFCCP, the Office of Civil Rights (OCR), and the Office of the Assistant Secretary for Veterans' Employment and Training (OASVET). Assistance was provided to OFCCP in the preparation and publication of a new final rule (51 F.R. 30467; August 26, 1986) amending a definition applicable to the Vietnam Era Veterans' program, and a related legal analysis of the need for notice and comment rulemaking on several other definitional changes was prepared. Work on OCR's final rule implementing nondiscrimination on the basis of handicap in departmental programs and activities and on a proposed rule implementing statutory discrimination mandates applicable to recipients of financial assistance from the Department was near completion at the end of the fiscal year. In addition, the division was instrumental in the development of an OASVET proposed rule implementing a statutory requirement for an annual

contractor report on the hiring and work force assignment of special disabled and Vietnam era veterans. The notice of proposed rulemaking was published in the *Federal Register* on May 28, 1986 (51 F.R. 19294).

The division also continued to provide significant legal opinion and advice support on the day-to-day operations of its client agencies. Activity in the handicap discrimination area was particularly intensive with opinions and legal analyses prepared on a variety of topics. Some of the issues involved were the question of whether Acquired Immune Deficiency Syndrome (AIDS) and related conditions should be viewed as a handicap for purposes of the Rehabilitation Act of 1973, OFCCP policies for granting waivers from Section 503 coverage to contractor facilities which are not involved in the performance of government contracts, and the Rehabilitation Act implications of proposals for drug use screening of employees and applicants for employment. In addition, the division reviewed for legal sufficiency, and prepared comments on, numerous policy directives proposed by OFCCP. The division continued to assist OCR in its efforts to review and approve State Methods of Administration under JTPA's equal opportunity provisions, and provided legal and technical advice to OFCCP on the preparation of a systemic discrimination training course for OFCCP staff.

Employee Benefits

In fiscal year 1986, the Division of Employee Benefits provided legal advice and services to the Employment Standards Administration's Office of Workers' Compensation Programs (OWCP) in connection with the administration of three major workers' compensation programs: the Longshore and Harbor Workers' Compensation Act (Longshore Act), the Black Lung Benefits Act (BLBA), and the Federal Employees' Compensation Act (FECA). During this period, the division assisted the OWCP in drafting and promulgating final regulations implementing the 1984 amendments to the Longshore Act (51 FR 4270, Feb. 3, 1986) and final regulations establishing a schedule of maximum allowable charges for medical procedures and services provided to injured Federal employees under the FECA (51 FR 8276, Mar. 10, 1986).

During fiscal year 1986, litigation under the Longshore Act and its extensions resulted in several significant

decisions. For example, in a unanimous decision issued July 18, 1986, the Court of Appeals for the District of Columbia Circuit affirmed a district court decision (614 F. Supp. 1419), holding that the Washington Metropolitan Area Transit Authority (WMATA) was not immune from paying assessments to the "special fund." *Brock v. Washington Metropolitan Area Transit Authority*, 796 F.2d 481. The court rejected WMATA's contention that it was immune from making payments to the "special fund" under either the intergovernmental tax immunity doctrine or under the provision of WMATA's compact which exempted it from virtually all taxes.

The Fifth Circuit in *Leete v. Director, OWCP*, 790 F.2d 418 (1986), held that, in determining whether a survivor was a widow within the meaning of Section 2(16) of the Longshore Act, the issue is whether a conjugal nexus between the claimant and the deceased employee existed at the time of death. In reversing the decisions denying benefits, the court held that the administrative law judge (ALJ) erroneously relied on events occurring long after the employee's death in finding that the conjugal nexus had been severed.

At issue in *Walker v. Washington Metropolitan Area Transit Authority*, 793 F.2d 319 (D.C. Cir. 1986), was the proper method for determining an injured employee's average weekly wages. The court held that a claimant's loss of wage earning capacity under Section 8(c)(21) must be based on the employee's average weekly wages prior to injury. The court rejected the argument that the correct test would be to determine the amount of wages the claimant would be earning at the time of the hearing had he remained at the old job in comparison to the amount of wages he could have earned at another job. The court noted, however, that there may be exceptional circumstances which would justify an exception to this rule thereby permitting the adjudicator to look at salary rates both before and after the injury.

The Fifth Circuit, in affirming an award of benefits for permanent and total disability, rejected the employer's argument that a claimant must demonstrate not only his inability to perform his former job but also that he cannot perform any work or that he has engaged in a diligent search and failed to obtain any employment. *Roger's Terminal Shipping Co. v. Director, OWCP, and Emile Smith*, 784 F.2d 687 (1986). The court affirmed the

decision on the ground that the employer had failed to satisfy its initial burden of showing the availability of jobs that the claimant could have performed. It is only after such a showing that the burden would shift to the employee to demonstrate that he had diligently tried and was unable to secure such employment.

Section 22 of the Longshore Act provides for the modification of a compensation order "on the ground of a change in conditions or because of a mistake in a determination of fact." The Fourth Circuit, in a divided decision, held that "a change in an employee's wage earning capacity, without a change in the employee's physical condition, could be the basis for a modification of an award" under Section 22. *Fleetwood v. Newport News Shipbuilding and Dry Dock*, 776 F.2d 1225 (1985), *reh'g denied*, January 29, 1986.

Litigation involving the provisions of Section 8(f) of the Longshore Act which provide a limitation on an employer/carrier's compensation liability continued to generate decisions by the courts of appeals. In *Brady-Hamilton Stevedore v. Director, OWCP*, 779 F.2d 512 (9th Cir. 1985), the court affirmed a decision of the Benefits Review Board reversing an ALJ grant of Section 8(f) relief because the employer failed to claim such relief in a timely fashion. The court held that "failure to claim Section 8(f) relief at the first hearing is considered a waiver of such relief and it will not thereafter be considered." *Verderane v. Jacksonville Shipyards, Inc.*, 772 F.2d 775, 777-78 (11th Cir. 1985). Although timely raised, Section 8(f) relief is not appropriate if there was no permanent disability from the first accident. *Todd Shipyards v. Director, OWCP*, 793 F.2d 1012 (9th Cir. 1986).

Where, as in the *Todd* case, the employee resumed his regular job including overtime without any restrictions or decrease in pay and other evidence showed no objective evidence of permanent disability, an ALJ decision denying Section 8(f) relief will be upheld as supported by substantial evidence. The First Circuit, in *Director, OWCP v. General Dynamics*, 787 F.2d 723 (1986), upheld the granting of Section 8(f) relief where the evidence supported a finding that prior to the job related injury, the employee had hypertension (i.e., significantly elevated blood pressure at the time of employment) and that such condition constituted an existing disability.

Section 8(f) relief would not be appropriate, the Ninth Circuit held in *Todd Shipyards v. Director, OWCP*, 792 F.2d 1489 (1986), where the employee/claimant is awarded a de minimis disabilty award (i.e., a one per cent loss of wage earning capacity) for the purpose of keeping available that employee's right to seek modification until the economic effects of the disability become apparent. *See Hole v. Miami Shipyards Corp.*, 640 F.2d 769 (5th Cir. 1981); *Randall v. Comfort Control, Inc.*, 725 F.2d 791 (D.C. Cir. 1984). The Ninth Circuit concluded that "when a *Hole* de minimis award is granted, section 8(f) is not appropriate. The criterion of a disability 'materially and substantially greater than that which would have resulted from the subsequent injury alone' is not met in this case."

In last year's report, a number of court decisions, holding that the 1984 amendments to the Longshore Act (Pub. L. 98-426, 98 Stat. 1639) applied to cases pending before the Benefits Review Board and courts of appeal, were discussed. At issue in *Keener, et al. v. Washington Metropolitan Area Transit Authority*, No. 85-5029 (D.C. Cir.), was whether the 1984 amendments, more specifically the amendment overruling the Supreme Court's decision in *WMATA v. Johnson*, 467 U.S. 925 (1984), applied to cases arising under the District of Columbia Workmen's Compensation Act of 1928, D.C. Code 36-501 *et seq.* (1973). In a unaminous decision issued on September 2, the court of appeals held that the 1984 amendments did not apply to cases arising under the 1928 statute which had been repealed effective July 26, 1982, 800 F.2d 1173. The court cited its earlier ruling in *Hall v. C & P Telephone Co.*, 793 F.2d 1354 (1986), in which it had held that the D.C. Act was "local" law and, therefore, the decisions of the D.C. Circuit were entitled to deference.

As in previous years, BLBA cases constituted the most active category of litigation in the court of appeals. Approximately 210 new appeals were docketed.

The most far-reaching decisions interpreted the parties' respective burdens of proof under the interim presumption found at 20 CFR Part 727. In *Stapleton v. Westmoreland Coal Co.*, 785 F.2d 424 (4th Cir. 1986), *pet. for cert. filed*, No. 86-327 (August 29, 1986), a divided court, speaking through different majorities, issued a decision rendering easier both invocation and rebuttal of the interim presumption. (The particulars of this case are

more fully discussed in the report of the Special Appellate and Supreme Court Litigation Division.)

The *Stapleton* decision overruled several prior Fourth Circuit decisions governing invocation and rebuttal. The Sixth Circuit, also addressed the burden of proof for invocation of the interim presumption in two cases. In *Engle v. Director, OWCP*, 792 F.2d 63 (1986), the court held that the claimant had the burden of establishing the elements of invocation by a preponderance of the evidence. In *Back v. Director, OWCP*, 796 F.2d 169 (1986), the court explicitly rejected the *Stapleton* holding concerning invocation. The Seventh Circuit also dealt with this issue in *Amax Coal Co. v. Director, OWCP*, 772 F.2d 304 (1986), holding that a single piece of credible evidence permits, but does not require, invocation of the interim presumption.

Several other decisions also dealt with issues important to the interim presumption. In *Peabody Coal Co. v. Director, OWCP*, 778 F.2d 358 (7th Cir. 1985), the court held that the interim presumption was within the Secretary's statutory authority and did not contravene any statutory provision, the congressional intent, or the Act's remedial purposes. The court also sustained the constitutionality of 20 CFR 727.203(a)(2), which permits a miner who can prove ten years of coal mine employment to invoke the interim presumption based on ventilatory function tests yielding qualifying values. The court held that the inference from the predicate facts to the presumed facts of total disability due to employment-related pneumoconiosis was not "so unreasonable as to be a purely arbitrary mandate" and, therefore, the presumption had to be upheld on constitutional grounds.

Orange v. Island Creek Coal Co., 786 F.2d 724 (6th Cir. 1986), centered on the quantum of evidence necessary to sustain rebuttal under 20 CFR 727.203(b)(4), which requires proof that the miner does not suffer from pneumoconiosis. The court upheld the ALJ's reliance on negative X-rays and a negative ventilatory study. In *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158 (3d Cir. 1986), the court upheld the ALJ's finding of rebuttal based on a doctor's finding that any respiratory disability suffered by the miner was not coal related. Having reached that result, the court joined the Sixth and Eighth Circuits in requiring the judge to "reject as insufficiently reasoned

any medical opinion that reaches a conclusion contrary to objective clinical evidence without explanation."

Several court decisions addressed important jurisdictional issues. In *Rich V. Director, OWCP*, 798 F.2d 432 (1986), the Eleventh Circuit joined the Second, Fourth, and Eighth Circuits in ruling that a petition for review from a board decision received by a court more than sixty days after issuance of the decision will be deemed untimely under 33 U.S.C. 921(c) and dismissed for lack of jurisdiction. The court suggested that under certain, unspecified circumstances, application of the doctrine of equitable tolling might be appropriate. In *Cox v. Benefits Review Board*, 791 F.2d 445 (6th Cir. 1986), the court held that a claimant, who had failed to raise any specific issues in his petition for review to the board, had failed to exhaust his administrative remedies. The court declined to review the merits of the ALJ's decision, ruling that the claimant had failed to "preserve the merits of this appeal for review." The Seventh Circuit, in *Arch Mineral Corp. v. Director, OWCP*, 798 F.2d 215 (1986), joined the First, Third, Fourth, Sixth, and Ninth Circuits in holding that "[a]bsent exceptional circumstances, we do not consider issues that were not raised before the Board." The court also concluded that a petition for review filed in the court of appeals pursuant to 33 U.S.C. 921(c) would be considered timely if filed within 60 days of the Board's denial of a timely motion of reconsideration. The court found that the policy of judicial economy favored this position which had been adopted by the majority of the courts.

One recent decision dealt with the issue of who is a coal miner under the Act. In *Williamson Shaft Contracting Co. v. Phillips*, 794 F.2d 865 (3d Cir. 1986), the court examined the extent to which coal mine construction workers were covered by the statute. That inquiry turned on whether the Secretary's regulation, defining covered construction workers as those exposed to "coal mine dust," was inconsistent with the statute which limited coverage to construction workers exposed to "coal dust." The court concluded that Congress understood the terms "coal dust" and "coal mine dust" to be interchangeable and, therefore, upheld the Secretary's regulation which interpreted the statutory term in a broader fashion than the employer had urged.

Eastern Associated Coal Corp. v. Director, OWCP (Patrick), 791 F.2d 1129 (4th Cir. 1986), centered on the

important issue of whether the government could be deemed a "responsible operator" under the Act and, as such, liable for benefits to a former Federal mine inspector. The court held that sovereign immunity precluded the government from being held liable for benefits and that the mine inspector's exclusive remedy against the United States was a FECA claim. The court declined to decide whether the mine inspector was a "miner" under the Act or to decide whether the government was a mine operator.

Two circuit courts joined the Third and Fourth Circuits in holding, as the Department urged, that in cases where the 1981 amendments mandated a transfer of liability from the responsible operator to the Black Lung Disability Trust Fund, claims cannot be remanded for payment from the trust fund absent the director's agreement. *Hardisty v. Director, OWCP*, 776 F.2d 129 (7th Cir. 1985); *Director, OWCP v. Goudy*, 777 F.2d 1122 (6th Cir. 1985). The unanimous Fourth Circuit, in the en banc *Stapleton* decision, joined the Third and Seventh Circuits in upholding the Department's position that a claimant who is awarded benefits is not entitled to prejudgment interest.

In *Hambry v. Holcombe*, 630 F. Supp. 199 (N.D. Ala. 1986), an action seeking review of a decision awarding attorney fees under Section 8127 of the FECA was dismissed. The court held that the award of an attorney's fee in a FECA claim is a discretionary function specifically delegated to the Secretary and that his exercise of discretion is not reviewable by any court. Nor may a person who has been awarded benefits under the FECA indirectly attack that award by filing suit against the United States under the Federal Tort Claims Act. *Grijalva v. United States*, 781 F.2d 472 (5th Cir. 1986). The court of appeals held that Section 8128(b) precluded the plaintiff from collaterally attacking the Secretary's determination that he was covered by FECA.

Finally, the Eighth Circuit, following the decision of the Supreme Court in *United States v. Lorenzetti*, 467 U.S. 167 (1984), held that the government was entitled to reimbursement for FECA payments even though the amount recovered in a third-party action compensated the injured employee solely for pain and suffering and future lost wages. *Green v. United States Department of Labor*, 775 F.2d 964 (1985). The court also rejected the argument that the government was not entitled to reimbursement

because it did not participate in the action against the third party. Further, any person, including an attorney, who accepts a damage award and disburses it without protecting the government's reimbursement rights will be jointly and severally liable to the government for the amount due under 5 U.S.C. 8132.

Employment and Training Legal Services

Fiscal year 1986, and in particular its second half, was marked by a dramatic increase in litigation in the temporary agricultural labor certification area. At the close of the year, more than a dozen cases were in active litigation in Federal courts stretching from Vermont to Idaho and involving virtually all employers using the program. The seemingly insoluable problem of balancing the conflicting interests of employers and domestic workers is best illustrated by the fact that the suits currently pending are divded about evenly between actions brought by workers and employers. The most frequently raised question concerns the ability of employers who have historically paid their workers on a piece rate basis to shift to hourly compensation and the amount that the appropriate hourly rate should be. The one positive major development in the temporary labor certification area was the dismissal of the long-pending case of *NAACP, Western Region v. Brock*, No. 2010–72 (D.D.C. Nov. 20, 1985).

Matters relating to temporary agricultural labor certification also played a prominent role in the rolemaking activity in which the Division of Employment and Training Legal Services participated. Some of the actions taken were the following: a revision of the methodology for computing adverse effect wage rates, a proposed addition of several States to be added to the list of States for which adverse effect wage rates are published, a proposed modification of the procedure for computing appropriate piece rates, and an increase in the amount that employers may charge U.S. and alien farmworkers for meals. In a related area, the division participated actively in staff-level work for national farm labor coordinated enforcement activities.

In the permanent labor certification area, a significant victory was received in *Wellington Kwan v. Donovan*, 777 F.2d 479 (9th Cir. 1985), where the court affirmed that employers seeking alien labor certification must demon-

strate that restrictive job requirements are based on business necessity not merely convenience. On the regulatory side, rulemaking was processed which will delete physicians and surgeons from the list of pre-certified occupations.

In the Comprehensive Employment and Training Act (CETA) area, the appellate courts have continued to be supportive in the agency's effort to recover grant funds not properly expended. The Eighth Circuit in *City of St. Louis v. Brock*, 787 F.2d 342 (1986), acknowledged the Department's ability to retrieve expenses incurred in violation of competitive bidding requirements and the Intergovernmental Personnel Act. In *City of Gary v. DOL*, No. 85-2473 (7th Cir. June 16, 1986), the court reaffirmed our right to recover monies from non-grant sources and restated the agency's right to choose from among the available sanctions in enforcing the requirements of CETA. In *South Carolina v. Brock*, 795 F.2d 375 (4th Cir. 1986), the court rejected the claim that the agency's delay in pursuing an audit prejudiced the State's ability to defend the action.

The question of the use of equitable factors in foregoing the recovery of disallowed costs under CETA remained an important, and to a significant extent, open question. The *St. Louis* decision contained language suggesting a very restricted use of such criteria, while the decision in *Action, Inc. v. Secretary*, 789 F.2d 1453 (10th Cir. 1986), contained more ambiguous statements.

While the Job Training Partnership Act (JTPA) has been fully operational for three years as the successor to CETA, litigation under it remained relatively small compared to the number of ongoing CETA audit matters. The division continued to provide assistance in the processing of appeals for service delivery area (SDA) determinations, and, in the only significant appellate decision, the court in *Cruz v. Brock*, 778 F.2d 62 (1st Cir. 1985), affirmed the Secretary's decision to accept the Governor's rejection of an SDA application which relied on non-final census data.

The division worked closely with the Employment and Training Administration (ETA) in the awarding, administration, and termination of JTPA grants for the employment and training programs of native Americans and migrant and seasonal farmworkers.

The division also provided legal assistance to the Assistant Secretary for Veterans' Employment and Train-

ing in the administration of JTPA programs for veterans, the Disabled Veterans' Outreach Program, the Local Veterans' Employment Representative Program, and certain of the Department's other veterans' programs.

Specialized assistance in the area of acquisition law (i.e., contracts and grants) was provided by the division to contract and grant officers employed by the Assistant Secretaries for Administration and Management and for Employment and Training, as well as to other DOL procurement officials. The division also participated on the Department's Procurement Review Board.

Two important unemployment insurance cases were decided during the fiscal year. In a lengthy opinion in *Cosby v. Bernardi*, No. 83-C-3116 (N.D. Ill. Dec. 31, 1985), the court rejected a challenge to Illinois' administration of the Extended Benefit and Federal Supplemental Compensation programs and in doing so offered some interesting opinions concerning the import and applicability of the various DOL issuances promulgated to implement the extended benefit work test. That case was still pending in the Seventh Circuit at the end of the year. The other case, *Ibarra v. TEC*, No. L-83-44-CA (S.D. Tex. Aug. 25, 1986), represents the most significant of a number of pending suits concerning the provisions of the Federal Unemployment Tax Act and the eligibility of aliens for unemployment benefits.

In other unemployment compensation matters, the division furnished a wide range of legal advice and assistance to ETA and other departmental officials. Those legal services primarily concerned legislation enacted in 1976 and in 1980 through early 1986, which substantially amended Federal requirements for the Federal-State unemployment compensation program and the Federal unemployment benefits and allowances program. Other matters requiring the division's legal services included interpretative advice and assistance in developing program letters disseminated to the States and, in many cases, involved assistance in preparing new regulations and the revision of existing regulations and new or amended program agreements for the States.

New regulations were published in final on the State Income and Eligibility Verification System and in proposed form for Quality Control standards in unemployment compensation programs. Revised regulations either were published or were pending publication for the Extended

Benefits program and a number of related Federal programs.

The division also assisted in preparing a program letter and an agreement with the States to implement the interstate offset and cross-program offset of State and Federal unemployment benefits newly authorized in legislation enacted in 1986. The division continued to assist ETA in proceeding with audit resolution and debt collection resulting from the Office of Inspector General's audits of the administration of Federal and Federal-State unemployment compensation programs by State employment security agencies in 45 States, as well as assisted in the preparation and publication of regulations for appeals from final determinations arising from audits and represented the Department in such audit appeals.

Fair Labor Standards

During fiscal year 1986, the Division of Fair Labor Standards was engaged in a variety of appellate and district court litigation of significance to the Department's policies and programs.

At issue in several cases has been the standard of "willfulness" to be applied in order to establish a third year of back wage liability under the Fair Labor Standards Act (FLSA)'s statute of limitations provision, 29 U.S.C. 255(a). The courts of appeals have reached differing results.

The First, Fourth and Tenth Circuits in *Donovan v. Daylight Dairy Products, Inc.*, 779 F.2d 784 (1985); *Donovan v. Bel-Loc Diner, Inc.*, 780 F.2d 1113 (1985); *Crenshaw v. Quarles Drilling Corp.*, 798 F.2d 1345 (1986) (private FLSA action), opted for the standard articulated in *Coleman v. Jiffy June Farms, Inc.*, 458 F.2d 1139 (5th Cir. 1971), *cert. denied*, 409 U.S. 948 (1972) (third-year liability attaches upon a showing that employer was aware that FLSA was "in the picture"). The Third and Seventh Circuits in *Brock v. Richland Shoe Co.*, 799 F.2d 80 (1986); *Walton v. United Consumers Club, Inc.*, 786 F.2d 303 (1986) (private FLSA action), adopted the more stringent "willfulness" standard set forth by the Supreme Court in *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111 (1985), for violations under the liquidated damages provisions of the Age Discrimination in Employment Act (violation is willful if the employer "knew or showed

reckless disregard for the matter of whether its conduct is prohibited by [the Act]"). *Daylight Dairy Products* was also significant as the first appellate ruling on the Department's requirement that "executives" must supervise 80-hours of subordinate employee work per week in order to be exempt from the FLSA; the court endorsed and applied the "bright-line" 80-hour rule as "reasonable."

The Ninth Circuit stayed the district court's judgment in *Bresgal v. Brock*, 637 F. Supp. 280 (D. Ore. 1986), wherein the district court had held that tree planters, tree thinners, and other forestry workers are covered by the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1802 *et seq*. In a declaratory judgment and injunctive action by forestry workers demanding enforcement of MSPA against forestry employers, the district court rejected the Department's interpretation of "agricultural employment" and held that the term was intended by Congress to cover forestry work. The government appealed the judgment.

The Department received a favorable decision from the Fourth Circuit in *Donovan v. Executive Towers*, 791 F.2d 925 (1986), which held that an FLSA-covered "enterprise" existed in defendant's diverse business operations (two adult bookstores, a bar with go-go dancers, and rental real estate). The court concluded that the enterprise requirements of the Act were met because the operations were related activities conducted under common control for the common business purpose of providing adult entertainment.

The Ninth Circuit in *Brock v. Sume Seto*, 790 F.2d 1446 (1986), issued a favorable ruling concerning the evidentiary standard to be used in FLSA cases where back wages are sought by the Secretary and the employer's records are statutorily inadequate. The district court had found wage violations but refused to order back pay because the Secretary's testimonial evidence was too "speculative" as to the number of unpaid hours worked. The district court also had sustained the employer's hearsay objection to the admission of the compliance officer's testimony and back wage computations because the figures were based on employee interviews. In reversing, the Ninth Circuit held that the district court had misapplied the burden of proof set in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946), and that, since the Secretary's *prima facie* case had not been rebutted, the district court

was required to make as accurate a back wage determination as possible with the evidence at hand. The circuit court also ruled that the compliance officer's testimony and back wage computations were admissible "where it was limited to showing the methodology of the computations and not the veracity of the employees' statements."

In *Brock v. Two "R" Drilling Co., Inc.*, 789 F.2d 1177 (1986), (original decision at 772 F.2d 1199), the Fifth Circuit granted the Department's rehearing petition and reversed its original decision. At issue was the "regular rate" of pay for employees who received bonuses for work on oil drilling barges. In its original ruling, the court had held that the bonuses were excludable from the employees' regular rate of pay as legitimate overtime premiums. On rehearing, the court entered a new decision, adopting the Department's view of the characteristics of an overtime premium and holding that the bonuses at issue were not premiums because they were payable only if numerous conditions were met, rather than payable automatically upon completion of overtime. The case was remanded for further proceedings on the employer's theory of a percentage-basis bonus.

In *Brock v. Ely Group, Inc.*, 788 F.2d 1200 (1986), *petition for cert. filed*, 55 U.S.L.W. 3092 (U.S. July 22, 1986) (No. 86-88) (July 22, 1986), the Sixth Circuit held that Section 15(a)(1) of the FLSA, the "hot goods" provision, applies to secured creditors in possession of goods produced in violation of the minimum wage and overtime provisions of the Act. In adopting the Department's interpretation, the court's ruling was in conflict with the Second and Fourth Circuits, which had held that secured creditors are exempt from the "hot goods" ban, *Wirtz v. Powell Knitting Co., Inc.*, 360 F.2d 730 (1966); *Shultz v. Factors, Inc.*, 65 Lab. Cas. (CCH) ¶32, 487 (1971).

During the fiscal year, two courts of appeals held that the award of prejudgment interest is appropriate in FLSA cases. In *Brock v. Davis-Lybrand, Inc., d/b/a/ Pitt Grill Restaurants*, 781 F.2d 901 (1986), the Fifth Circuit ruled that prejudgment interest is proper on back wages recovered under Section 17 of the FLSA, clarifying what had been confusing caselaw within the circuit. The Ninth Circuit issued a similar ruling in *Brock v. Alfaro*, 785 F.2d 835 (1986), holding that prejudgment and postjudgment interest should be awarded in FLSA cases. (The Special

Appellate and Supreme Court Litigation Division discusses another aspect of this decision in their report.)

In *Donovan v. Tierra Vista*, 796 F.2d 1259 (1986), the Tenth Circuit upheld the Department's position that an employee's work hours must fluctuate below as well as above 40 hours per week in order for the employee's duties to "necessitate irregular hours of work" and qualify for the *Belo* exception to the FLSA's overtime pay requirement, *Walling v. A.H. Belo Corp.*, 316 U.S. 624 (1942).

In *Star-Kist Samoa v. Brock*, No. 86-1423 (D.C. Cir. June 30, 1986), petitioners in four consolidated cases challenged the Department's wage order establishing minimum wage rates for industries in American Samoa. The wage order, as required by 29 U.S.C. 208(d), implemented the report of a special industry committee that had been appointed by the Secretary to conduct a hearing in American Samoa and to recommend minimum wage rates for the territory. The committee, which was comprised of industry, employee, and public members, determined that the minimum wage rates for the islands' several industries should be raised to the statutory minimum of $3.35 per hour, effective at different times for particular industries over a two-year period beginning in July 1986. The cases were dismissed as moot in light of Section 11 of Public Law 99-396, which provides that the contested wage order be denied effect and that, until new rates are established by another industry committee, the territory's minimum wage rates should be those in place prior to the wage order's effective date (a range from $1.77 to $2.82 per hour). In addition to handling appellate litigation, the division also provided legal support to the Wage and Hour Division in connection with the industry committee proceeding, its implementation of the committee's recommendations, and its responsibilities under the public law.

The Department received a favorable decision from the Fifth Circuit in *Counterman v. U.S. Department of Labor*, 776 F.2d 1247 (1985), a farm labor contractor's appeal from a district court order which affirmed the decision of an administrative law judge that the contractor had knowingly hired illegal aliens to work in his crews in violation of a provision of the Farm Labor Contractor Registration Act, predecessor to the MSPA, prohibiting such hiring practices. The court sanctioned the use of Border Patrol Reports prepared by immigration officials to

establish employment of illegal aliens in situations where the deported workers are unavailable to testify.

During the year, the Department continued its prosecution of the case of *Brock v. Elsberry, Inc. et al.*, File No. 84-1205-CIV-T-17 (M.D. Fla.), asserting its view that the Fourth Amendment does not require obtaining a judicial warrant, based on a showing of "probable cause," as a prerequisite for conducting a MSPA investigation. In *Elsberry*, the Department sought to enjoin the refusal of a grower, during the course of a MSPA investigation, to permit interviews of migrant workers on property owned or controlled by the grower's firm.

The Department was successful in establishing that children 14 to 18 years of age selling candy and cookies door-to-door were employed in violation of the child labor provisions of the FLSA. In *Brock v. Global Home Products, Inc.* and *Thomas v. Brock*, 617 F. Supp. 526 (W.D. N.C. 1985), the court found that Charles Thomas and Global Home Inc., among others, were employers of the under-aged minors who were employed in violation of the Act and enjoined them from future violations. This decision was appealed to the Fourth Circuit Court of Appeals.

The U.S. District Court for the Eastern District of Wisconsin, in *Brock v. Lauritzen, et al.*, C.A. 84-C-980 (Dec. 20, 1985), held that migrant workers who harvested cucumbers for defendants were "employees" within the meaning of the FLSA. The Wisconsin court in its opinion specifically disagreed with the Sixth Circuit decision in *Donovan v. Brandel*, 736 F.2d 1114 (1984), which held that agricultural workers who rowed and blocked cucumber vines and then picked the cucumbers were independent contractors.

In *Brock v. El Paso Natural Gas Co.*, 27 WH Cases 1348 (W.D. Tx. 1986), the district court found that the employer had underpaid overtime compensation due approximately 130 individuals, who were employed as operators and repairmen at satellite pumping stations. The employer had also failed to fully compensate the employees for their on-call duties. In remedying the violation, the court enjoined any further violations and ordered the restitution of back wages for the three-year period covered by the lawsuit, an amount later stipulated by the parties to total about $7.6 million.

In *Brock v. McGee Brothers Co., Inc.*, No. C-C-86-173P (W.D. N.C. April 7, 1986), the Department sued to enjoin McGee Brothers, a masonry company owned by members of the Shiloh True Light Church of Christ, from violating the minimum wage, overtime, recordkeeping, and child labor provisions of the FLSA. Child labor infractions involved violations of child labor Regulation 3 which, among other things, proscribes employment of children under 16 years of age in the construction industry. Children were employed in its multi-million dollar construction business, according to McGee, as part of the "vocational training program" of the Shiloh church. McGee's defense was that the FLSA as applied to the church violates the free exercise and establishment clauses of the Constitution.

The division represented the Wage and Hour Division in a number of appeals under the Davis-Bacon Act and the Service Contract Act in proceedings before the Wage Appeals Board and the Under Secretary, respectively. Perhaps the most significant of these cases was the board's decision in *Muskogee Shopping Mall*, WAB Case No. 85-26 (January 21, 1986), in which the board upheld the administrator's conclusion that Davis-Bacon applied to construction of a shopping mall which was federally assisted by use of an Urban Development Action Grant (UDAG) from the Department of Housing and Urban Development (HUD) to initially purchase and clear the land upon which the mall would be built. The board also upheld the administrator's decision not to require that Davis-Bacon be applied to the project; however, because under regulations in effect at the time the contract was awarded (which have subsequently been superceded), there was no mechanism to require payment of Davis-Bacon wages where the provisions were not incorporated into the contract. In the meantime HUD requested reconsideration of the underlying ruling by the Deputy Under Secretary for Employment Standards, which set forth the standards applied by the Wage and Hour Division and upheld by the Board in *Muskogee*. The Office of the Solicitor and the Wage and Hour Division had been actively working with HUD in an attempt to clarify application of the ruling and the board's decision to other UDAG projects, as well as to Community Development Block Grant projects.

The division provided legal assistance in connection with the promulgation of several regulatory proposals.

Under a proposed rule published on August 21, 1986, it was proposed to remove the restrictions on homework in six industries (women's apparel, jewelry, gloves and mittens, buttons and buckles, handkerchiefs, and embroidery) and to permit employers to employ homeworkers in these industries after first obtaining certificates from the Wage and Hour Division. This would have the effect of treating homework in these six industries in the same manner applicable to knitted outerwear.

Following the Supreme Court's decision in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), the Congress enacted amendments to the FLSA specifically relating to State and local governments. On April 18, 1986, proposed regulations were published interpreting and applying these amendments. Among other things, the proposal dealt with the provision of compensatory time off in lieu of cash overtime pay for State and local government employees, defined "volunteer" work for State and local governments, and set forth special overtime rules for police and fire employees who are employed for "work periods" of from 7 to 28 days.

Proposed revisions of the FLSA recordkeeping regulations were published on September 15, 1986. The purpose of the amended regulations was to update the current regulations in light of various statutory changes since 1975 and to relieve employers of unnecessary recordkeeping burdens.

On November 19, 1985, the Department published an Advance Notice of Proposed Rulemaking inviting comments on various aspects of the regulation interpreting and applying the FLSA exemption for "executive," "administrative," "professional," and "outside sales" employees.

On April 9, 1986, a final rule was published implementing statutory amendments to the Walsh-Healey Act and the Contract Work Hours and Safety Standards Act, which eliminated the requirement that contractors pay overtime for work in excess of eight hours per day.

Labor-Management Laws

In fiscal year 1986, the Division of Labor-Management Laws filed complaints in suits arising under the Labor-Management Reporting and Disclosure Act (LMRDA), defended the Secretary's determination not to sue under the Act, rendered advice on legal issues, and participated

in the negotiation and supervision of remedial elections of union officers. The division also participated in litigation and provided advice on issues arising under the Civil Service Reform Act, the Vietnam Era Veterans' Readjustment Assistance Act (VEVRA), the Urban Mass Transportation Act (UMTA), the Airline Deregulation Act (ADA), the Redwood National Park Expansion Act, and the Equal Access to Justice Act. The division provided legal advice to the Bureau of International Labor Affairs on various statutes relating to international trade and investment and on matters pertaining to United States participation in the International Labor Organization. Finally, the division offered advice and consultation on proposed legislation affecting these statutes and programs.

A substantial portion of the division's litigation during the year was in connection with union officer elections under Title IV of the LMRDA. In one such case, the supervised election held by District 1199, Health and Hospital Care Employees, Retail, Wholesale and Department Store Union, AFL-CIO, following a voluntary compliance agreement reached in July 1985, was hotly contested. The Department successfully defended a suit brought by the winning candidates requesting a preliminary injunction requiring their installation as officers pending the Department's investigation of complaints filed by the losing slates and certification of the election results. *Johnson v. Turner*, 795 F.2d 1004 (2d Cir. 1986), *aff'g* No. 86 Civ. 3654 (JES) (S.D.N.Y. May 16, 1986). The Department issued its determination validating the election on June 23. The defeated officers then filed an unsuccessful injunctive action seeking to prevent installation of the winning candidates. *Local 1199 v. Brock*, No. 86 Civ. 5016 (GLG) (S.D.N.Y. June 25, 1986). A suit requesting that the supervised election be overturned was pending at the end of the fiscal year. *Maldonado v. Brock*, No. 86 Civ. 5438 (GLG) (S.D. N.Y., filed July 17, 1986).

In another action involving Title IV, the Secretary sought to overturn the election of officers for the Ohio State Council of Carpenters (OSCC), an informational, lobbying, and educational organization comprised of 57 locals and nine district councils. The district court granted the union's motion for summary judgment. *Donovan v. Ohio State Council of Carpenters*, No. C 84-1147Y (N.D. Ohio Nov. 7, 1985). The court, agreeing with the Secretary, found that the OSCC was a labor organization as

defined in the LMRDA, even though it does not represent employees in contract negotiations or participate directly in collective bargaining agreements. The court further held, however, that suit did not lie against OSCC, since the focus of the complaint was directed at irregularities that occurred in the election of delegates to the OSCC convention by locals and district councils. Both OSCC and the Secretary appealed.

A major defensive suit under Title IV was resolved in the Secretary's favor when the district court dismissed the action for lack of subject matter jurisdiction. *Teamsters for a Democratic Union v. Secretary of Labor*, 629 F. Supp. 665 (D.D.C. 1986). The plaintiffs sought pre-election judicial review of the Secretary's interpretation of Section 401(a) of the LMRDA, governing the election of officers of national and international unions. Based on the language of the LMRDA and its legislative history, the court concluded that it was the intention of Congress to foreclose such review. The court observed that an objective of the LMRDA—to permit unions great latitude in resolving internal controversies and, where that fails, to apply the authority and expertise of the Secretary to settle the dispute, with intervention by the courts only as a last resort and only after an election has been held—would be thwarted if pre-election challenges by union members were permitted.

In another defensive action, the court of appeals disagreed with the Secretary's decision not to bring suit to set aside union elections. While it upheld the Department's disposition of two complaints, the D.C. Circuit in *Shelley v. Brock*, 793 F.2d 1368 (1986), refused to accept the Department's statement of reasons for refusal to sue on the third complaint, involving the transfer of members for voting purposes. The court held that the Department may not consider the availability of administrative resources in determining whether or not to sue under the LMRDA, however difficult it may be for the executive branch to allocate scarce resources to the many tasks it is called upon to perform. The case was to be remanded to the Secretary for further consideration and explanation of the determination not to sue.

The division additionally prepared a significant opinion involving Title IV. Under an AFL-CIO associate membership plan, national and international unions proposed to form subsidiary organizations to provide non-

collective bargaining services and benefits such as group insurance, credit cards, and travel and education programs for workers who were not represented by the unions. The associates' organizations would not represent employees or seek to represent employees for the purpose of collective bargaining, nor would they otherwise deal with employers in any way; they would be self-governing and structured and operated so that the organizations themselves would not constitute labor organizations as defined by the LMRDA. Answering the AFL-CIO's specific inquiry, the Department concluded that a union creating an affiliated organization was not required under Title IV to extend to such associate members the right to vote in union elections of officers.

Title II of the LMRDA was also the subject of litigation during fiscal year 1986. In *UAW v. Brock*, 783 F.2d 237 (D.C. Cir. 1986), the court upheld the principle that the Secretary's decision not to take enforcement action under Section 203, which deals with reporting requirements for certain employers and labor relations consultants, is unreviewable but concluded that the Department's pronouncement of new statutory interpretations in an opinion explaining the decision not to take enforcement action is reviewable. The court of appeals directed the district court to determine whether the Department's two revised interpretations of Section 203 were arbitrary, capricious, or otherwise contrary to law. On remand, the district court was to consider whether Section 203 requires labor consultants to file reports concerning certain advice rendered to employers and supervisors to oppose union organizing activities and whether Section 203 requires employers to file reports concerning the portion of wages paid to supervisors or other employees during the time that they attempt to dissuade other employees from joining a union.

A case arising under the VEVRA posed procedural and substantive issues. The court in *Gulf States Paper Corp. v. Ingram*, 121 L.R.R.M. 2985 (N.D. Ala. 1986), determined that it had jurisdiction under 28 U.S.C. §1331, even if not under VEVRA, which speaks only of suits by persons entitled to the benefits of VEVRA's provisions, to entertain an employer's declaratory judgment action filed in advance of the starting date for a one-year period of leave requested by an employee-reservist. On the merits, the court found in a subsequent decision that the employer

had not violated VEVRA by denying leave because the request was unreasonable: the employer would have to do without a person qualified to perform the reservist's job assignments for at least six months, and the nursing training program in which the reservist planned to enroll was not required for her military duties or for a military promotion. *Gulf States Paper Corp. v. Ingram*, 633 F. Supp. 908 (N.D. Ala. 1986). An appeal was pending at the end of the fiscal year.

The United Transportation Union unsuccessfully challenged the Secretary's certification under Section 13(c) of the UMTA of the employee protective arrangements in connection with the application of the Greenville (South Carolina) Transit Authority for UMTA funds. The court entered summary judgment for the Secretary, finding that the Secretary had not violated the provisions of Section 13(c)(2) requiring arrangements sufficient to ensure "the continuation of collective bargaining rights." *United Transportation Union v. Donovan*, No. 83-0665 (D.D.C. April 17, 1986). The Department had determined that the transit authority had not bargained with the union after taking over the transit service from a private operator that ceased operations in 1975 and that the transit authority had not applied for Federal funds until 1982. The Department further concluded that the provisions of Section 13(c) require only the protection of existing collective bargaining rights and that there was no connection between the private operator's 1975 cessation of operations (ending the collective bargaining relationship with the union) and the transit authority's 1982 application for Federal funds. Accordingly, the Secretary was not required by Section 13(c) to reject the proposed protective arrangements, which did not compel the transit authority to enter into collective bargaining with the union that had represented employees of the private operator in 1975.

On January 22, 1986, the United States District Court for the District of Columbia issued a favorable decision in *Alaska Airlines, Inc. v. Brock*, 632 F. Supp. 178 (D.D.C. 1986). The court upheld the Department's regulations promulgated pursuant to the employee protection provisions of the ADA, with the single exception of 29 C.F.R. §220.21(a)(1), dealing with initial hiring age, which the court refused to approve with respect to pilots and flight officers. The case was remanded to the Secretary for consideration as to whether airlines should be permitted to

apply their initial hiring age disqualification to those protected employees who are pilots or flight officers, due to concerns for air safety. On remand, the division reviewed the rulemaking record in light of the ADA, its legislative history, and legal precedents and concluded that the regulation as originally published was consistent with congressional intent and that all protected employees were entitled by law to protection from initial hiring age disqualification. (Other aspects of the *Alaska Airlines* litigation are discussed in the Special Appellate and Supreme Court Litigation section of this report.)

In the area of international labor affairs, the division prepared annual reports on the maritime conventions of the International Labor Organization (ILO) that the United States has ratified, including a detailed report on Convention No. 55, Shipowners' Liability (Sick and Injured Seamen). The division also drafted reports on two unratified ILO conventions, No. 119 (including ILO Recommendation No. 118), Guarding of Machinery, and No. 148 (including ILO Recommendation No. 156), Working Environment (Air Pollution, Noise, and Vibration). Two other unratified ILO conventions, Nos. 29 and 105, concerning forced labor, were the subject of a discussion paper prepared by the division for the Tripartite Advisory Panel on International Labor Standards. Finally, the division provided advice and assistance relating to the drafting of the United Nations International Convention on the Protection of the Rights of All Migrant Workers and their Families.

Legislation and Legal Counsel

In fiscal year 1986, the Division of Legislation and Legal Counsel continued to work closely with Department officials in drafting proposed bills and related background materials, presenting the Department's views on pending legislation, and giving technical assistance to congressional committees. The division also performed a wide variety of "house counsel" functions, provided administrative legal services under the Freedom of Information and Privacy Acts, provided representation in connection with the Department's internal labor relations and personnel matters, assisted in the preparation of *Federal Register* documents, and furnished legal services to the Office of the Inspector General and the Bureau of Labor Statistics.

Throughout the year, the division worked on the preparation and review of 53 statements to be delivered by Labor Department witnesses before congressional committees. Departmental officials testified on such important legislative matters as immigration reform, high risk occupational diseases, national retirement income policy, veterans' employment opportunities, and unemployment compensation. Departmental officials also provided oversight testimony with respect to the administration of numerous DOL programs.

In addition, more than 150 reports to the Office of Management and Budget and congressional committees were prepared by the division on a broad spectrum of legislative proposals of interest to the Department.

For the past few years, this division worked with various DOL officials on legislative proposals to reform immigration laws. This activity continued during fiscal year 1986 and concluded, shortly after the close of the fiscal year, when the President signed Public Law 99-603 on November 11, 1986. The Immigration Reform and Control Act of 1986 provides for alien legalization and employer sanctions for the hiring of illegal aliens. It also codifies and alters the heretofore regulatory "H-2" temporary alien agricultural worker program and redesignates them as "H-2As." Under this program, the Department determines (1) the wages and working conditions growers must provide and (2) the availability of U.S. workers for specific jobs for which foreign workers are sought. The Act gives the Justice Department final authority to approve H-2 regulations. The Act also establishes a seven-year special seasonal agricultural worker program for producers of perishable commodities. This program includes a two-tier legalization program and a replenishment worker program if DOL and Agriculture determine a farmworker shortfall exists. In addition, the Act requires State agency verification on alien eligibility for various programs, including unemployment compensation unless an equally effective system exists or the program would cost more than the resulting benefits (Project SAVE).

On October 1, 1985, a draft bill was submitted to the Congress proposing certain changes in the administrative structure of the Department. During the fiscal year, the division worked closely with the Office of Congressional Affairs and other officials as the bill proceeded through the legislative process. Soon after the close of the fiscal

year, the bill (S.2864), with relatively minor amendments, was adopted by the Senate on October 10, 1986. The House adopted the Senate-passed version on October 16, 1986. On November 11, 1986, the President signed Public Law 99-619, the Department of Labor Executive Level Conforming Amendments of 1986. Among other things, this legislation establishes a Deputy Secretary of Labor and three additional Assistant Secretary positions. It also provides that the Assistant Secretary for Administration and Management position will require Senate confirmation.

During the previous fiscal year (on March 27, 1985), the Department submitted to the Congress a draft bill "to authorize adequate appropriations for the President's Committee on Employment of the Handicapped." (The Labor Department provides certain support services to the Committee.) The draft bill proposed to repeal the Committee's current $1 million authorization of appropriations ceiling which had been in effect since 1968 and to replace it with an authorization of such sums as may be necessary to carry out the Committee's work. During fiscal year 1986, this proposal was considered in conjunction with congressional enactment of the Rehabilitation Act Amendments of 1986. As finally adopted by the Congress, Section 902 of Public Law 99-506 provides for a "such sums" authorization of appropriations for the President's Committee on Employment of the Handicapped for fiscal years 1987 through 1991. This legislation was signed into law on October 21, 1986.

The division performed a wide variety of non-legislative "house counsel" functions. These functions included the furnishing of advice with respect to the Ethics in Government Act as well as other conflict-of-interest laws, orders, and regulations. The division consulted with numerous departmental agencies, officials, and employees on financial disclosure requirements, the avoidance of potential conflicts of interest, and permissible post-employment activities.

In June the division, in cooperation with the Office of the Assistant Secretary for Administration and Management, established a regular, ongoing DOL ethics training program. This 3-hour course was entitled "Knowing Where The Buck Stops—Practical Help For Supervisors."

The division coordinated the Department's responses to the recommendations of the President's Commission on Organized Crime. The Department identified 27 recom-

mendations, some with sub-parts, that directly affected the Department's structure, administration, and enforcement of its statutes, specifically the criminal provisions of the Labor-Management Reporting and Disclosure Act and the Employee Retirement Income Security Act, and the Inspector General's Organized Crime Program.

The division also provided legal advice on diverse matters including appropriations laws, the Hatch Act, administrative law issues, the Paperwork Reduction Act, and the Equal Access to Justice Act.

The division provided representation in the Department's internal labor relations, equal employment opportunity, and disciplinary cases. This representation involved both administrative cases and cases before the federal courts. In addition, advice and guidance were provided to all departmental agencies and, in particular, to the Office of the Assistant Secretary for Administration and Management on personnel matters. Also of significance was an increasing amount of litigation before arbitrators involving disciplinary matters.

The division provided services to the Department for its publications in the *Federal Register*. In its capacity as liaison to the *Register* for the Department, the division conducted training for appropriate departmental employees regarding new format requirements for documents established by the Office of the Federal Register.

Throughout the year, the division performed a full range of legal services associated with the Freedom of Information Act (FOIA), the Privacy Act (PA), and the Federal Advisory Act Committee (FACA). A total of 256 administrative appeals decisions were issued under the FOIA and PA, an increase over fiscal year 1985 figures. Of the cases litigated under these statutes, two favorable decisions were of particular interest. In a precedent-setting PA case, the court held that the methodology used by the Office of Workers' Compensation Programs in the maintenance of compensation files met the requirements of the PA for timeliness, accuracy, and relevancy. In a FOIA case, the court ruled that an internal enforcement manual was entitled to protection under the open investigation exception since the pertinent sections of the manual dealt with a targeting system for investigations. This decision includes within the FOIA's definition of investigatory records materials which are not directly related to a particular investigation. The division also processed ap-

proximately 600 subpoenas served upon departmental officials arising out of private litigation in which the Department was not a party. The Department was successful in the majority of cases by either quashing the subpoena or negotiating a settlement.

Finally, the division provided continuing legal support to the Office of Inspector General. This involved litigation and representational support, advice on criminal, administrative, legislative, personnel, and civil matters. The division also performed diverse house counsel functions and advised auditors and investigators on procedural and substantive matters relating to their work.

Mine Safety and Health

The Division of Mine Safety and Health had an active year on behalf of the Mine Safety and Health Administration (MSHA). In the rulemaking area, the division assisted in the development of proposed safety standards published during the year for roof support and the use of explosives in underground coal mines and of two rules revising MSHA's mining equipment approval program. In addition to providing drafting assistance for these rules, the division participated as counsel in public hearings on the roof support and approval program proposals. The division also played a key role in furthering the development of proposed rules updating existing approval specifications for explosives and establishing new specifications for sheathed explosive units. Progress was made on proposals implementing the pattern of violations enforcement provision in the Federal Mine Safety and Health Act of 1977 (Mine Act) and establishing procedures for mine plan approvals. Additionally, the division assisted in the development of preproposal draft standards for underground coal mine ventilation and electrical safety. In the metal and nonmetal standards area, the division played a significant role in the development of (1) final rules for ground control, (2) proposed rules revising the standards for radiation protection in underground mines, and (3) proposed rules for air quality, chemical substances, and respiratory protection in surface and underground mines. These proposed and final rules were undergoing agency or departmental review at year's end. The division also provided legal assistance at public hearings on the proposal that would establish a new system for the classification and regulation of gassy mines.

In legal advice area, the division assisted in the review of 193 petitions for modification of safety standards filed by mine operators.

During the fiscal year, approximately 1,700 new cases were filed with the independent Federal Mine Safety and Health Review Commission, including 1,200 civil penalty cases filed on behalf of the Secretary under Section 110 of the Mine Act. While a majority of these cases were handled by regional offices, the division continued to handle approximately 200 cases requiring close coordination with the MSHA national office. The division also handled all litigation before the Department's administrative law judges arising out of petitions for modification of MSHA standards. During the year, seven new petition cases were referred to the division. The division also processed 32 actions for temporary reinstatement on behalf of miners who were discharged because of their exercise of statutory rights under the Mine Act.

The Wilberg Mine disaster investigation continued to generate significant legal activity throughout the year. In *Janice Faye Carter, et al. v. Secretary of Labor*, Civil Action No. 85-C 1091W (D. Ut. Oct. 16, 1985), the district court upheld MSHA's ability to limit immediate access to the underground investigation. The court ruled that the survivors were not entitled to have a representative present during the underground efforts to recover the 27 victims of the fire and investigate the fire-affected areas of the mine. The area surrounding the location of the victims and the long-wall face area were investigated immediately after their recovery in December 1985. The underground investigation of the actual fire area, however, could not be resumed until July 1986 when it was considered safe to enter that area. The investigation was completed in September 1986. Testing and evaluation of equipment and materials found and removed from the fire area continued at year's end. Citations and orders for violations found were to be issued by the end of calendar year 1986 with the report to follow shortly thereafter.

The litigation filed the previous year which relates to media access to MSHA accident investigation interviews, *Society of Professional Journalists v. Secretary of Labor, appeal docketed*, No. 86-1753 (May 13, 1986), was on appeal before the Tenth Circuit Court of Appeals at year's end.

In October 1985, MSHA issued its final investigation report concerning the explosion that occurred at Pennsylvania Mines, Greenwich Mine, on February 16, 1984. Civil penalty cases were filed for five "unwarrantable failure" violations observed during investigations. The administrative law judge issued a decision striking the "unwarrantable failure" designation, and the Commission granted the Secretary's Petition for Interlocutory Review which was pending at year's end.

In addition to these five cases, more than 150 orders were issued as a result of MSHA's investigation into the Greenwich Mine explosion, more than 100 of which were contested. In accordance with a favorable settlement, the operator paid a civil penalty for each violation cited during the investigation.

An important development in the discrimination area this year was the revision of the Commission's procedural rule governing temporary reinstatement of discharged miners (29 C.F.R. 2700.44). That amendment provided for a hearing in advance of a reinstatement order and clarified the burden of persuasion and the standard of review. Also of significance was the case of *Secretary of Labor on behalf of Ronnie D. Beavers, et al. v. Kitt Energy Corporation, and UMWA*, WEVA 85-73-D (January 30, 1986). This case represented a departure from earlier Commission decisions which had held that laid-off individuals without statutorily required training could be bypassed in recalls without violating the discrimination provisions of the Mine Act. As discussed later in this report, the discrimination area continued to be the subject of extensive Commission and appellate review.

Collection of unpaid civil penalties continued to be a key area of interest to the division. MSHA field personnel were made available to assist the Office of the Solicitor and U.S. Attorneys in information collection and in making direct personal visits or contacts with delinquent mine operators. The program proved highly successful. Efforts also continued to streamline the processing of civil penalty collection cases by MSHA, the division, and the U.S. Attorneys.

Finally, 120 Freedom of Information Act matters were handled by the division, many involving discovery-type requests for investigative files.

The division handled a significant number of administrative appeals, both within the Department and before the

Commission. The division handled all hearings before departmental administrative law judges as well as appeals in cases involving petitions for the modification of mandatory safety standards. During the year, most of this litigation involved petitions seeking modification of 30 C.F.R. 75.326 to allow a coal mine operator to utilize a mine entry containing a coal carrying conveyor belt as a major air course in the mine ventilation system. In *Emerald Mines*, No. No.83-MSA-17 (Oct. 3, 1985), the Assistant Secretary granted such a petition, and the division defended that decision in the court of appeals. *UMWA v. Brock*, *appeal docketed*, No. 85-1735 (D.C. Cir. Nov. 7, 1985). There were also two challenges to decisions of the Administrator for Coal Mine Safety and Health granting operators interim relief from a manadatory standard during the pendency of a petition for modification. The Assistant Secretary ruled that the challenges were premature, *UMWA v. Kaiser Coal Corp.*, No. 86-MSA-1 (Feb. 21, 1986), and *UMWA v. Emery Coal Corp.*, No. M-85-127-C (April 30, 1986). The division was defending both those decisions in the Court of Appeals for the District of Columbia Circuit at year's end, *UMWA v. MSHA*, *appeal docketed*, No. 86-1239 (April 22, 1986), and *UMWA v. MSHA*, *appeal docketed*, No. 86-1327 (June 3, 1986).

The Commission also decided two important cases of statutory interpretation. It ruled, for the first time, that the Secretary may designate violations of mandatory health exposure standards as "significant and substantial." *Consolidation Coal Co. v. Secretary of Labor*, 8 FMSHRC 890 (June 20, 1986), *appeal docketed*, No. 86-1403 (D.C. Cir. July 11, 1986). In a case involving the "walkaround pay" provisions of the Mine Act, the Commission held that the Act requires miners to be compensated for their participation in post-inspection conferences, even if the conferences are not held immediately following the inspections. *Secretary of Labor v. Southern Ohio Coal Co.*, 8 FMSHRC 295 (March 4, 1986), *appeal docketed*, No. 86-3292 (6th Cir. April 2, 1986). Those decisions were pending before the U.S. Court of Appeals for the District of Columbia and for the Sixth Circuit, respectively, at year's end.

The division's commission appellate caseload continued to include a large number of discrimination cases. The commission reiterated its holding that a miner who alleges

that he has been constructively discharged must show that the intolerable conditions that caused him to leave his job must have been created by the operator in deliberate retaliation for prior protected activity. *Simpson v. Kenta Energy, Inc.*, 8 FMSHRC 1034 (July 8, 1986). In *Goff v. Youghiogheny & Ohio Coal Co.*, 7 FMSHRC 1776 (November 19, 1985), the commission ruled that a miner who claims that he has been discriminated against because of black lung disease may file a claim before the Commission under Section 105(c) of the Mine Act even if he could also proceed before the Benefits Review Board under Title IV of the Act. The division participated in both cases in an amicus capacity. In *Secretary of Labor on behalf of Hale v. 4-A Coal Co.*, 8 FMSHRC 905 (June 25, 1986), the Commission ruled that an operator who attempts to have a discrimination case dismissed because of the Secretary's late filing, must be able to show that it was prejudiced by the late filing.

The division also concluded a number of significant cases in the courts of appeals. In a major decision, the District of Columbia Circuit held that the Secretary had retained discretion under MSHA's "independent contractor" enforcement policy to cite either a mine operator or a contractor for a violation committed by the contractor. *Brock v. Cathedral Bluffs Shale Oil Co.*, 796 F.2d 533 (1986). In *Consolidation Coal Co. v FMSHRC*, 786 F.2d 1152 (4th Cir. 1986), the court held the coal company responsible for violations associated with a preparation plant and an extremely hazardous refuse pile. Despite the company's attempts to divest itself of property interests in the facilities, the court found that the company had contributed the majority of the refuse making up the pile and had retained sufficient interest in the facilities to fall within the Act's definition of an "operator." In *Consolidation Coal Co. v. Secretary of Labor on behalf of Cameron*, 796 F.2d 364 (4th Cir. 1986), the court agreed with the position of the Commission and the Secretary that a miner is protected against discrimination if he refused to work because of a reasonable belief that performance of his assigned task could injure one of his coworkers. In another discrimination case, the Tenth Circuit held that the Secretary cannot be sued for discrimination because he decides not to pursue a miner's discrimination complaint. *Roland v. FMSHRC*, No. 85-1828 (July 14, 1986). However, in a third discrimination case, the Tenth Circuit

held that a mine operator is not prohibited from requiring new miners to obtain, at their own expense and as a condition of hiring, the safety and health training required by the Act. *Emery Mining Co. v. FMSHRC*, 783 F.2d 155 (1986).

Finally, in *Secretary of Labor v. Pontiki Coal Corp.*, 8 FMSHRC 668 (May 27, 1986), the Commission held that former Administrative Law Judge Joseph B. Kennedy abused his authority when he included statements questioning the integrity and diligence of MSHA personnel in an order approving a settlement agreement between the Secretary and an operator.

The Commission agreed with the Secretary's position that the judge had abused his authority by issuing an opinion that dealt with matters far beyond the scope of the proceedings and that it contained numerous statements which were unsupported by any evidence whatsoever and were defamatory, derogatory, and inappropriate. Based upon its determinations, the Commission struck from the opinion all but the sentence approving the amount of the settlement.

Occupational Safety and Health

In the area of standards development and promulgation, extensive assistance was provided by the Division of Occupational Safety and Health to the Occupational Safety and Health Administration (OSHA). A final rule was published on hazard communications relating to the definition of trade secrets and trade secret access provisions. Additionally, a new final standard was published for asbestos, tremolite, anthophyllite, and actinolite. This standard applies to all industries covered by the Occupational Safety and Health Act (OSH Act) including the construction and maritime industries and general industry. The revised asbestos standard reduced the permissible exposure level tenfold from the previous standard, based on OSHA's finding that exposed workers faced a significant risk to their health under the old standard. The Secretary also issued a determination that further regulation was necessary to protect fieldworkers and committed the Department to promulgate a Federal field sanitation standard if the States did not adequately protect them. OSHA issued an amended final cotton dust standard maintaining for the textile industry the exposure limits and

preference for engineering controls which have reduced byssinosis and improved productivity in the textile industry. Additionally, proposed regulations for formaldehyde, benzene, and toxic substances in laboratories and an ANPRM for 1,3-butadiene were published in the *Federal Register*.

OSHA established a MDA Mediated Rulemaking Advisory Committee to mediate issues associated with the development of a Notice of Proposed Rulemaking on 4,4'-Methylenedianiline (MDA). To date, the balanced membership, including members from labor, industry, and government, had reached consensus on all agency items.

In the safety area, a final rule was published on electrical standards for construction, eliminating the need to incorporate the National Electrical Code by reference, supplementing relevant requirements in Subpart K, and accommodating changes in technology without compromising safety. A final rule was published on Accident Prevention Tags. Standards were proposed for concrete and masonry construction, health and safety requirements for shipyard employment, servicing of single-piece and multi-piece rim wheels at marine terminals, and recordkeeping requirements for tests, inspections, and maintenance checks.

In fiscal year 1986, the courts issued several significant decisions affecting OSHA standards, inspections, and enforcement. In the standards area the District of Columbia Circuit, in *Public Citizen Health Research Group v. Tyson*, 796 F.2d 1479 (D.C. Cir. 1986), upheld OSHA's reduction of the permissible exposure limit for ethylene oxide from 50 parts to 1 part per million. The court, however, remanded for OSHA's reconsideration the issue of whether a short term exposure limit for ethylene oxide should be included in the standard. In two other cases in that circuit, OSHA was successful in its defense against mandamus actions seeking to compel it to set mandatory deadlines for rulemaking. In *United Steelworkers of America v. Donovan*, 783 F.2d 1117 (D.C. Cir. 1986), the court dismissed a mandamus action seeking to compel OSHA to expedite its rulemaking on a revised benzene standard. The court noted that OSHA's issuance of a proposed standard mooted any claims of delay prior to issuance of the proposal. In *International Union, UAW v. Brock*, 756 F.2d 162 (D.C. Cir. 1985), the court likewise dismissed an

action in which the union sought to compel expedited consideration of OSHA's formaldehyde rulemaking.

The courts issued eight important decisions relating to OSHA inspection warrants. In *Smith Steel Casting Co. v. Brock*, No. 800 F.2d 1329 (1986), the Fifth Circuit held that the exclusionary rule may not be applied to suppress evidence of violations of OSHA standards insofar as the agency is seeking to require abatement of the violations; the court relied on the Supreme Court's decision in *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984), to preclude application of the exclusionary rule where it would prevent abatement of health and safety violations and thereby allow the employer to continue his unlawful activities. The court further reasoned that the exclusionary rule could be applied insofar as OSHA seeks to impose mandatory monetary penalties, but, in those instances, application of the exclusionary rule would be subject to the good faith exception recognized in the criminal law context by the Supreme Court in *United States v. Leon*, 468 U.S. 897 (1984). In *Davis Metal Stamping, Inc. v. OSHRC and Brock*, 800 F.2d 1351 (1986), the Fifth Circuit followed its decision in *Smith* and permitted the introduction of evidence and the imposition of a monetary penalty, where OSHA had conducted an inspection pursuant to an invalid warrant which, in good faith, it had believed to be valid.

During the fiscal year, the Eleventh Circuit joined the Fifth and Tenth Circuits in holding that employers are not entitled to obtain discovery beyond the "four corners" of a warrant application in the design of OSHA's general schedule inspection plan. In *Donovan v. Mosher Steel*, 791 F.2d 1535 (11th Cir. 1986), *petition for cert. filed*, Sept. 30, 1986 (No. 86-523), the court observed that broad-based discovery into OSHA's inspection plan would invite misuse of the warrant process and could amount to a "deliberate impediment to enforcement."

Two courts issued decisions supporting the imposition of coercive and compensatory fines where employers are held in contempt for failure to comply with OSHA warrants. In *Donovan v. Burlington Northern, Inc.*, 781 F.2d 680 (9th Cir. 1986), *cert. denied*, 102 S.Ct. 69 (1986), the court reversed the district court's denial of an award of attorneys' fees to the Secretary to cover his expenses in prosecuting a contempt action against a company which had refused to comply with a valid OSHA inspection warrant. The court held that good faith is not a relevant

factor in determining whether to award fees for a contempt action, and stressed that a fees award is appropriate as a remedial measure where an employer resists a valid warrant. In addition to attorneys' fees, the First Circuit upheld the imposition of coercive fines against a company and its responsible corporate manager who had failed to comply with a valid OSHA warrant. *Secretary of Labor v. Ottman Custom Processors, Inc.*, 783 F.2d 8 (1986), *cert. denied*, 55 U.S.L.W. 3220 (1986). The court held that, once notified of a district court's contempt adjudication, an employer has an affirmative obligation to purge itself of contempt, for instance, by making a telephone call. The court upheld the district court's assessment of a fine against the employer for its failure to affirmatively take such action.

In another warrant-related case, the Tenth Circuit upheld the validity of a warrant that was based in part on a compliance officer's observations of violations that were in plain view when he initially attempted to conduct a consensual inspection. *Robert K. Bell Enterprises, Inc. v. OSHRC*, No. 85-1547 (Feb. 19, 1986). In *Brock v. Brooks Woolen Co.*, 782 F.2d 1066 (1986), the First Circuit invalidated a warrant where the employer successfully raised a challenge to the application under *Franks v. Delaware*, 438 U.S. 154 (1978). Finally, the Sixth Circuit held that a warrant is not required for inspection of a subcontractor's operation if the general construction contractor consents to the inspection, even though the subcontractor objects. *J.L. Foti Construction Co., Inc. v. Donovan*, 786 F.2d 714 (1986).

In a significant decision, the Eleventh Circuit joined the Second Circuit in holding that the OSH Act's preemption provision, Section 4(b)(1), does not oust OSHA of regulatory authority over uninspected vessels with respect to safety or health hazards that are not regulated by the Coast Guard. *In Re Inspection of Norfolk Dredging Co.*, 783 F.2d 1526 (1986), *reh. den.*, 790 F.2d 88 (1986), *cert. denied*, 107 S. Ct. 271 (1986).

In the enforcement areas, there were also several important decisions. The D.C. Circuit joined the First and Third Circuits in reversing the Review Commission by holding that general construction standards apply to the steel erection industry in the absence of a specifically applicable requirement in the steel erection standard. In *Brock v. L.R. Willson & Sons, Inc.*, 773 F.2d 1377 (D.C.

Cir. 1985), the court held that the general requirement for safety nets where employees are exposed to falls exceeding 25 feet applies to protect employees against exterior falls. In *Brock v. Schwarz-Jordan*, 777 F.2d 195 (1985), the Fifth Circuit held that, where the Secretary and the review commission differ as to the correct interpretation of a standard, it will defer to the Secretary's interpretation if reasonable. Finally, in *Brock v. City Oil Well Service, Inc.*, 795 F.2d 507 (1986), the Fifth Circuit held that it is not necessary to look to industry custom to interpret OSHA's general respirator standard, which requires employers to provide respirators where "effective engineering controls are not feasible" and respirators are "necessary to protect the health of the employer" (29 C.F.R. 1910.134). In addition, the court noted that both the statute and standard place responsibility for the standard on the employer and that he cannot escape responsibility by relying on contrary industry custom.

The division provided significant pre-citation review for OSHA's special emphasis programs directed at the chemical (recordkeeping and chemical leaks) and fireworks (explosions hazards) industries. Joint participation by the Bureau of Labor Statistics and OSHA in the revision of the recordkeeping guidelines and in the formulation of a recordkeeping statistical quality assurance program continued. The division also participated extensively in the Occupational Safety and Health Review Commission's revision of its rules of procedure.

During fiscal 1986, the Philadelphia regional office was extensively involved in the investigation and pre-trial preparation in *Brock v. Union Carbide Corporation*, OSHRC Docket No. 86-0509. Secretary Brock indicated in his press conference on April 1, 1986, that OSHA had issued citations with the largest proposed penalties in its 15 year history to Union Carbide's plant at Institute, WV. Union Carbide was cited for chemical emissions which injured 6 employees as well as 135 residents of Institute. There were also extensive recordkeeping violations. The Philadelphia regional office was involved in preparing preliminary motions and responses, and the taking of extensive depositions pursuant to the pre-hearing schedule imposed by the administrative law judge.

In *Hufstetler v. Roadway Express Inc.*, 85-STA-13 (Aug. 21, 1986) [the administrative companion case to *Roadway Express v. Brock*, 624 F. Supp. 197 (D. Ga.

1985), *appeal docketed*, 54 U.S.L.W. 3632 (U.S. March 25, 1986) (No. 85-1530)], the division successfully argued to the Secretary's Office of Administrative Appeals that the decision of the administrative law judge (ALJ) finding Roadway in violation of Section 405 of the Surface Transportation Assistance Act (STAA) was correct. At issue in an extremely complicated factual setting was whether Roadway had discriminatorily fired a safety activist. The company also raised several novel issues in the STAA context, including whether the ALJ was biased and whether the Secretary should defer to the arbitration procedure set up under the nationwide trucking contract. The Secretary concluded that none of Roadway's claims of error was correct.

The division assisted OSHA in preparing a *Federal Register* notice of final approval of the Indiana State Plan terminating concurrent Federal OSHA jurisdiction in that State. The division also successfully concluded district court litigation in *Gray v. Brock*, No. C84-7736 CAL (N.D. Cal.), in which plaintiff sought a court order requiring OSHA to institute proceedings to withdraw Federal approval of the California State Plan. On February 28, 1986, the district court denied summary judgment and dismissed plaintiff's claim for relief on the grounds that plaintiff lacked standing and that OSHA's decision not to institute withdrawal proceedings was not judicially reviewable. Plaintiff's appeal from this ruling was still pending in the Ninth Circuit at the end of the fiscal year.

Plan Benefits Security

During the fiscal year the Division of Plan Benefits Security filed several significant enforcement actions pursuant to the Employee Retirement Income Security Act (ERISA), successfully resolved a number of other cases by judicially entered consent orders, and received several favorable court rulings.

On April 14, 1986, the Department filed *Brock v. The Graniteville Corporation, et al.*, No. 1:86-937-8 (D.S.C.), against the Graniteville Corporation, the Southeastern Public Service Corporation (SEPSCO), and various fiduciaries of the Graniteville Employee Stock Ownership Plan (ESOP) for violations of ERISA. The case involved a resolution and contractual commitment made in April 1983 by Graniteville to contribute approximately $35 million in

surplus assets from a pension plan which was being terminated to the ESOP. Shortly afterwards, in May 1983, Graniteville entered into an agreement with SEPSCO which sought to modify the initial commitment by allowing Graniteville a period of 10 years in which to pay the funds owed, with no interest. The Department's position was that Graniteville, SEPSCO, and various fiduciaries of the plan were liable under ERISA for any losses incurred as a result of the company's failure to honor its April 1983 commitment.

Brock v. Group Legal Administrators, Inc., et al., Civil Action No. 86-CIV-5402, (S.D.N.Y.), was filed on July 9, 1986, against former trustees of the Brotherhood of Railway Clerks Allied Services Division Welfare Fund. The suit alleged that the trustees had failed to act prudently when they contracted with Group Legal Administrators (GLA) to provide a program of prepaid group legal benefits to certain participants of the plan without an adequate investigation to determine the ability of GLA to fulfill its obligations under the contract and without sufficient consideration of alternative service providers. The complaint further alleged that the trustees made excessive and unwarranted payments to GLA, failed to properly monitor its operations, and renewed the plan's contract with GLA without adequate inquiry into GLA's fulfillment of the terms of the first contract with the plan. The complaint also named GLA and its two principals as defendants and alleged that they knowingly participated in and financially benefited from the trustees' breaches by, among other things, furnishing false and misleading information to the trustees to induce them to enter, continue, and renew the contract on terms and conditions unfavorable to the plan.

Brock v. Penvest Inc., et al., No. 86 Civ. 5404 (S.D.N.Y.), and *Brock v. Mahoney, et al.*, No. 86 Civ. 5403 (S.D.N.Y.), were filed on July 9, 1986. The *Penvest* complaint sought injunctive relief and more than $4 million in restitution from Penvest, Inc., an unregistered investment management corporation which had invested assets of 23 employee benefit plans during 1980-1983. The corporation filed for bankruptcy in 1983 after the failure of its investments in corporate notes and mortgages, many of which involved companies and individuals with financial ties to Penvest's principals. The lawsuit alleged numerous violations of the prudence and prohibited transaction

provisions of ERISA Sections 404 and 406. In the *Mahoney* suit, the Department alleged prudence violations by present and former trustees of the Teamsters Local 808 Pension Fund, which lost more than $1 million in principal and interest by investing through Penvest in 1982 and 1983. In addition to their failure to exercise due diligence in selecting an investment adviser, the trustees' selection of an adviser who was not registered under the Investment Advisers Act of 1940 rendered them jointly and severally liable under ERISA Section 405 for the acts and omissions of the adviser.

Cases which were favorably resolved by consent order during the fiscal year included *Brock v. Self et al.*, Civil Action No. CV-84-0194 (W.D. La.). On November 21, 1985, the court entered a decree requiring the defendant trustees of a Louisiana profit sharing plan to pay $130,000 to the plan and to sell real estate valued at $1.3 million. The Secretary's January 1984 complaint had alleged that the trustees leased two parcels of real estate to contributing employers for use in the employers' discount department store business in return for less-than-adequate consideration. In addition to $130,000 in restitution, the defendant was ordered to purchase, for his own account, one of the parcels for $460,000, and to sell the other parcel, or to appoint an independent real estate manager to do so. Proceeds from the sales of the two parcels of property and the back rent will be used to fund additional benefits for plan participants.

A consent order was filed on March 11, 1986, in Dallas against the trustees of the George E. Anderson Co., Inc., Employees Pension Trust (GEAC Plan) in *Brock v. Carroll D. Williams, et al.*, CA3-84-1091-F (N.D. Tex.). The Department filed suit on July 11, 1984, alleging that the trustees of the GEAC Plan violated ERISA's diversification requirements by investing between 60 and 90 percent of the plan's assets in office-warehouses in the Dallas area. Under the terms of the order, the trustees were enjoined from making any more real estate investments until such time as the aggregate fair market value of the plan's real estate investments falls below one-third of the plan's assets. In addition, the market value was not to exceed such level thereafter.

The Department secured a consent order, entered March 31, 1986, in *Brock v. Carleton D. Beh Jr., et al.*, Civ. No. 86-228-B (S.D. Iowa). Under the terms of the

order, the fiduciaries of the Beh Co. Employees Stock Ownership Plan (ESOP) agreed to pay $60,014 to the ESOP for losses arising from the ESOP's purchase of excessively priced shares of employer stock during March 1980; this cash payment was to be distributed among the ESOP's participants other than the defendants. The order also provided for: (1) cancellation of a $300,000 ESOP debt arising from a November 1979 loan to the ESOP for another purchase of employer stock, (2) rescission of that stock purchase, (3) the release of an additional 200 shares of employer stock to the ESOP, and (4) termination of the ESOP followed by distribution of its assets to the participants within six months of the order's entry. Finally, the order provided that the fiduciaries be enjoined from engaging in future ERISA violations and from acting in any fiduciary service provider capacity with respect to an ERISA plan for five years.

On May 5, 1986, the Department filed a complaint against the Marine Engineers Beneficial Association (MEBA) Pension Trust and its current and former trustees, simultaneously with a consent order settling the matter. *Brock v. Calhoon, et al.* No. 86-1256 (D.D.C.). The complaint alleged that the trustees violated ERISA Section 406(a)(1)(A) by causing the Trust to lease office space in a building owned by it to MEBA, the trust's sponsoring union, and to other parties in interest with respect to the trust. Under the terms of the consent order, the trustees agreed to pay $22,320 to the trust for losses caused by the delinquency of one of the tenants, and to appoint an independent investment manager for a period of five years. The manager, who must be approved by the Department, will have the authority and responsibility to approve or reject the party in interest leases and all future proposed leases or modifications and extensions of existing leases.

Brock v. McCartney, et al., CA-83-170L (D.N.H.), involved four below-market rate loans made by the Northern New England Carpenters Pension Fund to finance unionized construction projects and was settled before trial in August 1986. Under the terms of the consent decree entered in the case, the former trustees of the Fund were required to pay $220,000 in restitution to the Fund. In addition, the Fund will not be permitted to make real estate loans or similar investments for a period of six years except in cases where an independent fiduciary recommends the loan after verifying, among other things,

that the loan will be made at the then prevailing interest rate.

Among the several significant decisions received during the year was *Brock v. Citizen Bank of Clovis, et al.*, Civ. 83-1054(BB) (D.N. Mex. Dec. 20, 1985). In that case the court held that the trustees of a bank-sponsored pension plan violated ERISA by investing up to 80 percent of the plan's assets in mortgages on real estate in a single county and by causing the plan to borrow money from the plan sponsor in order to make other investments. The court enjoined the trustees from investing more than one-third of the plan in any one type of investment and from making further party in interest loans.

Another important ruling was in *Brock v. Latimer, et al.* No. 86-2893 (PNL) (S.D.N.Y.). In this case, the Secretary had alleged that the sole trustee of the Chicago Pneumatic Tool Company Employee Stock Ownership Plan (ESOP), Thomas Latimer, also the president of the ESOP's sponsoring corporation, breached his fiduciary duties to the ESOP under Sections 404 and 406 of ERISA by causing it to purchase 1 million shares of sponsor company stock at a time when a tender offer for such shares was imminent at a highly inflated price. On April 18, 1986, on the Department's motion, defendant Latimer removed himself as trustee and was replaced by two new trustees. In an order and opinion dated May 13, 1986, the court noted that "a company officer who is also the trustee of its pension plan during a hostile takeover attempt may be under a duty to resign in favor of a neutral trustee." The opinion also noted that a fiduciary's duty in such a tender offer situation cannot be discharged simply by consulting with current plan participants.

On July 22, 1986, following a trial, the district court in *Brock v. Crapanzano*, CA No. 84-1899 (S.D. Fla.), ordered three former officials of the Consolidated Labor Union Trust (CLUT) to pay a total of $1,428,000 in restitution for violations of ERISA. In addition, the court appointed an independent fiduciary, nominated by the Department, to administer the plan. A consent order entered on June 20, 1986, settled the Department's claims against several other defendants by requiring them to transfer assets worth over $250,000 to CLUT.

In ordering the restitution to be paid by the non-settling defendants, the court found that they had caused CLUT: (1) to pay unreasonably high administrative service

fees to two companies controlled by certain defendants and (2) to pay commissions to insurance agents soliciting new union members. The court's decision was the first holding of a federal court that an employee benefit plan covered by ERISA may not pay commissions to recruit new plan participants. The court permanently enjoined the non-settling defendants from serving as fiduciaries or service providers to any employee benefit plan.

There were also a number of significant ERISA matters completed by the Regional Solicitor's Offices in San Francisco, Atlanta, and Boston.

In the San Francisco region, in *Brock v. Northwest Employees Retirement Fund*, No. 83-1222V (W.D. Wash.), the trustees had allowed the assets of the plan to remain in passbook savings accounts paying 5 1/2 percent interest for a number of years prior to September 1981, despite the fact that during that period there were alternative investments which would have been equally safe and liquid and which would have paid substantially greater returns. After plaintiff's case was presented, a consent judgment was entered providing for the payment of $74,000 by the defendants to the plan and also requiring the defendants to take specific actions to insure that their future investment decisions are made in a prudent and timely manner.

In a similar case, *Brock v. Green*, No. C84-178R (W.D. Wash.), where plan funds were left in low interest and even non-interest bearing accounts, the court ordered the trustees to implement methods of securing prudent returns on trust funds and to retain competent, independent auditing services to supervise accounting practices. The defendants also agreed to pay an additional $10,000 to the plan.

An order approving settlement of the case of *Brock v. Endo, et al.*, Civ. No. 83-0009 (D. Hawaii), was entered against past and present trustees of the PECA/IBEW Training Fund, who had purchased for $1,190,000 some 69 acres of land, purportedly to be used as a training center, which was zoned for agricultural purposes. The settlement agreement provided that an independent receiver would be appointed to attempt to sell 57 acres of the property. The remaining 12 acres had been rezoned and were to be retained for use as a training center. The receiver was to have a limited time in which to sell the property, and, if unable to do so, the fiduciary insurer was to purchase the property for an agreed price, or pay the difference between

the actual purchase price and the price agreed upon by the parties if the property sells for less.

Brock v. Matt W. McCusker, et al., Civ. No. 83-5270 WMB GX (C.D. Cal.), involved a Taft-Hartley health plan which had been placed in receivership, leaving $1 million to $3 million in unpaid claims. The primary violation alleged was the payment of $1.4 million in commissions to a company which marketed participation in this plan to non-union members. Other charged violations resulted from the establishment by the plan administrator of a personal checking account into which he placed over $500,000 in plan assets. Prior to the commencement of the trial, settlements and/or judgments had been reached with all but one of the original defendants, providing for $2.5 million in repayment to the fund.

In *Brock v. Wells Fargo Bank*, No. C-86-1155 SW (C.D. Cal.), a temporary restraining order was obtained and, ultimately, a preliminary injunction prohibiting the trustees of Plumbers Local 467 Pension Plan from lending $4.5 million to a developer. These actions were based on the grounds that the trustees had acted imprudently by failing to give proper consideration to the adequacy of the property appraisal, the security on the loan, the credit worthiness of the borrower, and to other contingencies. The case was settled after the defendants restructured the agreement and instituted safeguards to protect their investment.

In the Atlanta region, a consent judgment was entered on January 6, 1986, in *Brock v. Snider*, No. C84-0857-L(J) (W.D. Ky.), requiring four profit sharing plan trustees to reimburse the plan in the amount of $5,434. The amount was computed based upon the difference between 9 percent interest per annum and the market rate of interest (11 percent) on a loan to one of the trustees for the purchase of unimproved real property.

A consent judgment was entered on September 22, 1986, in *Brock v. Morris*, No. C84-438A (N.D. Ga.), in which the defendant fiduciary agreed to pay $6,500 to cover the losses to plan participants caused by the lapse of health insurance coverage.

On October 24, 1985, a complaint was filed in *Brock v. Jensen, et al.*, No. C-85-1000-L(A) (W.D. Ky.), in which violations of the prudence, party-in-interest, and self-dealing provisions of ERISA were alleged and which

resulted from fiduciaries having failed to collect mandatory contributions from the plan sponsor.

A complaint was filed on March 28, 1986, in *Brock v. Lewkowicz*, No. Sh-C-86-100 (W.D.N.C.), alleging that the trustees had improperly loaned over $3.9 million of plan funds to the sponsoring employer and purchased over $500,000 in silver contracts.

On September 3, 1986, in *Brock v. William W. Gillikin*, No. 86-99-Civ-4 (E.D. N.C.), a complaint was filed charging the plan trustee with imprudence and self-dealing by having loaned substantially all of the plan assets to a corporation which he owned and controlled.

Among the cases handled by the Boston Regional Solicitor's Office was *Brock v. J. Robert Cannon, et al.*, Civil Action No. 85-4734-Z (D. Mass.). On January 1, 1986, a Cape Cod savings bank and a pension plan trustee were ordered to restore to the plan sponsor over $219,000 in plan assets which had been used to secure a loan. The bank later foreclosed on the loan and plan assets were attached in payment. The bank was charged with having knowingly participated in the trustee's breach of fiduciary duty.

In *Brock v. Demanche, et al.*, No. 84-3880-S (D. Mass.), a judgment was entered against the trustees of three employee benefit plans enjoining them from violating ERISA and ordering them to restore to the plans $59,000 in losses caused by their breach of fiduciary duty. The trustees had been charged with engaging in prohibited transactions in connection with the receipt of dual compensation and trustee fees contrary to the provisions of plan documents.

In *Brock v. Greater Providence Deposit Corp., et al.*, No. 86-0308 (D.R.I.), the court entered an order enjoining the trustees of a pension plan and a profit sharing plan from violating ERISA in the execution of their duties in connection with the administration of the plans. The court also appointed a Providence bank and trust company as investment manager with exclusive authority over the handling of plan assets. The trustees were ordered to restore $30,000 in losses caused by their failure to diversify plan investments.

In *Brock v. Ardito, et al.*, File No. 86-0582-G (E.D.N.Y.), on May 16, 1986, the court granted the Secretary's motion for preliminary injunction enjoining the trustee and plan administrator of the Deena Packaging

Industries Profit Sharing Plan from acting as fiduciaries, and appointed a receiver to take possession of plan assets pending a final resolution of the court action. The defendants were charged with having breached their fiduciary duties by engaging in prohibited transactions and self-dealing with plan assets.

On May 21, 1986, two major cases were filed, *Brock v. Robert Half of Boston, Inc., et al.* and *Brock v. Berman, et al.*, No. 86-1563-T (D. Mass.), charging the named fiduciaries of several profit sharing plans with a breach of fiduciary obligations by reason of their failure to take proper action in a timely manner to curtail and remedy diversification violations committed by an investment manager. The plans incurred significant losses as a result of the investment manager's overconcentration of plan assets in highly speculative oil stocks.

The division was also involved in a number of regulatory and legislative initiatives. The division was instrumental in developing proposed regulations under Section 502(i) of ERISA, which deal with civil sanctions against parties in interest who engage in prohibited transactions with employee benefit plans that are not subject to the prohibited transaction excise tax of the Internal Revenue Code. These regulations would also establish procedures for the imposition of civil penalties.

The division had an important role in the preparation of the revised Form 5500 series, published in proposed form on September 19, 1986. The Form 5500 series is the ERISA annual report, which provides detailed information pertaining to the financial condition of employee benefit plans. By revising the Form 5500 series, the Department intended to improve the usefulness of the forms for enforcement purposes and to provide clearer disclosure to plan participants, while reducing the annual reporting burden on plans.

During fiscal year 1986, the division devoted substantial resources to developing the Department's final "plan assets" regulations. Those regulations were to be issued in early fiscal 1987.

The division worked closely with the Pension and Welfare Benefits Administration in developing proposed amendments to Prohibited Transaction Exemption 81-6, which permits employee benefit plans to engage in securities lending transactions with certain parties in interest. The proposed amendments would expand the categories of

transactions that would be subject to the exemption and would also permit different types of collateral in securities lending transactions to which the exemption applies.

The division assisted in the development of a number of important pieces of legislation affecting employee benefit plans. First, it provided technical assistance relating to the Single Employer Pension Plan Amendments Act of 1986, a statute which substantially revises the system for insurance of guaranteed benefits under single-employer pension plans. Second, the division provided technical advice with respect to amendments to ERISA, the Internal Revenue Code, and the Public Health Service Act that require continuation of health coverage for employees and their beneficiaries under certain circumstances. Finally, attorneys in the division also aided in the development of legislation relating to the application of the Department's plan assets regulation to publicly-offered real estate companies.

The division was involved in several other significant projects during the fiscal year. These included: (1) developing the analytical basis for two advisory opinions which indicated that plans may enter into incentive compensation arrangements in certain circumstances, (2) participating in the development of an interpretive position regarding the application of the prohibited transaction provisions of ERISA to "sweep services" provided to plans by banks, (3) assisting in the development of a technical release regarding the application of the fiduciary responsibility provisions of ERISA to "soft dollar" arrangements which fall within the safe harbor of Section 28(e) of the Securities Exchange Act of 1934, and (4) drafting an opinion describing the application of the fiduciary duty provisions of ERISA to transactions undertaken in the course of plan terminations.

Special Appellate and Supreme Court Litigation

In fiscal year 1986, the Division of Special Appellate and Supreme Court Litigation continued its function of providing centralized litigation and review of all Supreme Court matters in which the Department is a party or has an interest, as well as litigation of court of appeals cases especially selected because of the importance, novelty, or difficulty of the legal issues presented.

In the Supreme Court, three favorable merits decisions of importance were received. In *Brock v. Pierce County*, 106 S. Ct. 1834 (1986), the Court unanimously held that the Secretary can recover misused Comprehensive Employment and Training Act (CETA) grant funds even when he has not issued a final determination within the statutory time limit, because the statute does not state a consequence for failing to meet the deadline. The decision is particularly significant for two reasons: (1) it permits the Secretary to seek recovery of approximately $80 million in Federal monies that would otherwise have been unrecoverable, and (2) the rationale for the decision is clear precedent for permitting the Secretary to take action under many other statutes even when he may have been unable to meet statutory time limits for investigations or decisions.

The Court also unanimously accepted the Secretary's view, in *Cuyahoga Valley Railway Co. v. United Transportation Union*, 106 S. Ct. 286 (1985), that he has unreviewable discretion to withdraw a citation charging an employer with violating the Occupational Safety and Health Act, thus preserving a central element of the Secretary's prosecutorial discretion. Again acting unanimously, the Court summarily affirmed, in accord with our views, two court of appeals decisions approving the Department's interpretation of the Employee Retirement Income Security Act (ERISA) as preempting state causes of action relating to the payment of severance pay out of the company's general assets. *Gilbert v. Burlington Industries*, 106 S. Ct. 3267 (1986), *aff'g* 765 F.2d 320 (2d Cir. 1985); *Brooks v. Burlington Industries, Inc.*, 106 S. Ct. 3267 (1986), *aff'g* 772 F.2d 1140 (4th Cir. 1985).

In *International Union, United Automobile Workers v. Brock*, 106 S. Ct. 2523 (1986), the Court held that the union has representative standing to challenge, on behalf of its members denied trade adjustment assistance under the Trade Act, certain departmental guidelines interpreting statutory eligibility requirements. It also held that the federal courts have jurisdiction to consider challenges to the guidelines even though state courts have exclusive jurisdiction over a state agency's application of the guidelines to individual benefit claims. This latter ruling could implicate several departmental unemployment compensation programs.

At the Secretary's urging, the Supreme Court accepted for review not only *Cuyahoga* and *Pierce County* but also *Brock v. Roadway Express, Inc.*, 106 S. Ct. 1966 (prob. juris. noted May 19, 1986), an important case involving the constitutionality of the Surface Transportation Assistance Act's procedures under which the Secretary is to order temporary reinstatement of employees who have filed supportable retaliation complaints without a prior evidentiary hearing. The Court also agreed to hear, as we suggested in *Pilot Life Ins. Co. v. Dedeaux*, 106 S. Ct. 3293 (cert. granted June 30, 1986), the question of whether ERISA preempts state common law contract and tort claims asserted against insurance company fiduciaries for their handling of a benefits claim. The Court also accepted review of *Alaska Airlines, Inc. v. Brock*, 106 S. Ct. 1259 (cert. granted Mar. 3, 1986), to determine whether the unconstitutional legislative veto in the Airline Deregulation Act's reemployment protection provision is severable from the remainder of the provision. Finally, the Court agreed with the Secretary that, despite a conflict in the circuits, it should not review *Kansas Gas & Electric Co. v. Brock*, 780 F.2d 1505 (10th Cir. 1985), *cert. denied*, 106 S. Ct. 3311 (1986), thus preserving a critical ruling that the Energy Reorganization Act's (ERA) protections against retaliation cover an employee's filing of internal nuclear safety and quality assurance complaints with the employer.

The division also received numerous important decisions in cases litigated in the courts of appeals. Among these decisions was the ERA ruling in *Kansas Gas & Electric Co., v. Brock*, summarized above. In a case raising a similar issue, i.e., whether sending internal memoranda is protected from retaliation under the ERA, the division obtained a remand to the Secretary so that the Secretary could resolve the issue in the first instance. *Ryan v. Brock*, No. 86-4058 (2d Cir. June 24, 1986). Also under the ERA, the court of appeals upheld, in *Dunham v. Brock*, 794 F.2d 1037 (5th Cir. 1986), the Secretary's determination that the employee was legitimately discharged because of his insubordinate outbursts at a counseling session, by applying to the ERA, National Labor Relations Act precedent that profane language coupled with defiant conduct justifies discharge for insubordination, even where the employee's conduct is provoked by the employer.

In a Fair Labor Standards Act (FLSA) case also involving retaliation, *Brock v. Alfaro*, 785 F.2d 835 (9th Cir. 1986), the court held that the FLSA prohibits not only retaliatory actual discharges but also retaliatory "constructive discharges," which occur when an employee quits because of what a reasonable person would consider intolerable working conditions. Another important imterpretation of the FLSA was handed down in *Cosme Nieves v. Deshler*, 786 F.2d 445 (1st Cir. 1986), *pet. for cert. filed*, 54 U.S.L.W. 3842 (U.S. June 12, 1986) (No. 85-2045), in which the court held that the district courts have jurisdiction over the FLSA claims of employees of a nonappropriated fund instrumentality and that removal of employees' actions from state to federal court is authorized.

Under the Black Lung Benefits Act (BLBA), the Secretary obtained an *en banc* decision in *Stapleton v. Westmoreland Coal Co.*, 785 F.2d 424 (4th Cir.), *pet. for cert. filed sub nom. Mullins Coal Co., Inc., of Virginia, et al. v. Director, OWCP, et al.*, 55 U.S.L.W. 3159 (U.S. Aug. 29, 1986) (No. 86-327), definitively delineating the proper burden of proof allocation under the interim black lung regulation: a claimant may invoke a presumption of disability caused by black lung disease by offering one piece of qualifying evidence, and the employer may rebut with all relevant evidence, including medical evidence that fails to meet standards specified to invoke the presumption. The court also accepted the agency's interpretation of its regulations as requiring employers to pay interest only on benefits accruing 30 days after the first agency decision granting benefits. Also under the BLBA, the court of appeals upheld, in *Kosh v. Director, OWCP*, 791 F.2d 918 (3d Cir. 1986), our view that a claimant receiving Part B benefits is not authorized to file a Part C claim for reimbursement of the excess earnings offset required by Part B and that this different treatment of Part B and C claimants is constitutionally permissible.

The Ninth Circuit finally resolved in the Department's favor a major issue under the Redwood Act, holding on rehearing that the Secretary, through his agent, the California Employment Development Department, can prospectively terminate payment of benefits to claimants originally determined eligible under an erroneous construction of the statutory criteria. *DeMarinis v. Donovan*, 790 F.2d 1419 (1986); *Holt v. Donovan*, 790 F.2d 1417 (1986).

Under a different unemployment insurance program, the court of appeals agreed with our position as amicus in *Edwards v. Valdez*, 789 F.2d 1477 (10th Cir. 1986), that the Federal Unemployment Tax Act requires social security benefits to be deducted from unemployment insurance benefits and that this different treatment of social security and private pension recipients is constitutionally permissible.

In the ERISA area, the Seventh Circuit reheard en banc *Brock v. Fitzsimmons*, Nos. 84-2827, 84-2863, 84-2864 (reh'g granted Feb. 19, 1986), a case presenting the critical question of whether the Secretary can be precluded from prosecuting his separate ERISA action by settlement of a private class action based on the same claims of fiduciary misconduct. Since the panel had rejected the Secretary's position that he is so precluded, the rehearing en banc gave new life to the Department's view. The same court, decided in *Spickerman v. Central States, Southeast and Southwest Areas Health and Welfare Fund*, 801 F.2d 257 (8 Cir. 1986), that the former trustee did not have, as a matter of law, an enforceable contract right to the periodic payment of his attorney's fees in defending against the Secretary's ERISA action brought against him and other trustees. Rather, a triable question of fact remained to be determined regarding the propriety of the pension fund's 1982 termination of attorney's fees payments.

In *Brock v. Mazzola*, 794 F.2d 427 (9th Cir. 1986), the court ruled that the remedial provisions of ERISA are not sufficiently broad to support an injunction prohibiting plan fiduciaries who breached their fiduciary duties from receiving reimbursement from union assets for their ERISA liabilities, even if receipt of those monies would violate the Labor-Management Reporting and Disclosure Act (LMRDA) obligation to expend union funds solely for the benefit of the union and its members. In the LMRDA area, the Sixth Circuit agreed with the Secretary that an international union's recall election is not within the Secretary's exclusive Title IV jurisdiction because it is not the type of election required by that title, that is, a regular and periodic election of union officers. *BLE International Reform Committee v. Sytsma*, 802 F.2d 180 (6th Cir. 1986).

Under the Bankruptcy Code, the Ninth Circuit issued a favorable decision in *Lindsey v. Department of Labor*

(In re: Harris Management Co.), 791 F.2d 1412 (1986), resulting in payment of over $100,000 in contributions owed to a union welfare and pension plan under a contract subject to the Service Contract Act (SCA). The court held that an agreement between the Department and the SCA-covered contractor, who had petitioned for reorganization, to pay the amounts owed to the plans under the contract effected an assumption of the contract when approved by the bankruptcy court.

In *Brandt v. Stidham Tire Co.*, 785 F.2d 329 (D.C. Cir. 1986), the court agreed with the Secretary that the employer has a right, under the Longshore and Harbor Workers' Compensation Act, to offset against the compensation award monies received in a third-party suit, even if that tort recovery includes damages for pain and suffering. It also ruled that a claimant is entitled to a recalculation of base wages to include interim cost-of-living adjustments, when the claimant's status changes from temporary to permanent disability.

Under the Occupational Safety and Health Act, the Sixth Circuit agreed with the Secretary in *Ohio Manufacturers' Association v. City of Akron*, 801 F.2d 824 (6th Cir. 1986), that the Federal hazard communication standard preempts a municipal "right-to-know" ordinance, at least to the extent that the ordinance regulates employee safety in the workplace, because the Federal standard expressly states its preemptive effect. The court held, however, that the statute itself does not provide for preemption of local laws by occupational safety and health standards.

Finally, the court of appeals found unconstitutional that aspect of a Federal Mine Safety and Health Review Commission rule that permits issuance of a temporary reinstatement order without a prior evidentiary hearing. *Southern Ohio Coal Co. v. Donovan*, 774 F.2d 486 (6th Cir. 1985). As noted previously, the Supreme Court agreed to review a similar ruling under the STAA in *Brock v. Roadway Express, Inc.*.

Special Litigation Division

During fiscal year 1986, the Division of Special Litigation continued to actively litigate a number of cases. These included several involving the Teamsters' Central States, Southeast and Southwest Areas Health and Welfare and

Pension Funds, as well as the Southern Nevada Culinary and Bartenders Pension Trust. All of these cases related to the enforcement of the Employee Retirement Income Security Act of 1974 (ERISA).

In *Brock v. Fitzsimmons*, No. 78 C 342 (N.D. Ill.), the Secretary had challenged the conduct of various former fund fiduciaries for their part in the investment of Teamsters' Pension Fund assets. The litigation resulted in substantial safeguards for the fund's future operations. These safeguards included a consent degree (entered September 22, 1982), providing that all the fund's investment assets shall be managed by a court-appointed named fiduciary (currently Morgan Stanley Group, Inc.) and a court-appointed Independent Special Counsel (currently former Attorney General William B. Saxbe), who will monitor the fund's compliance with both ERISA and the consent decree. Litigation of the Secretary's claims against the fund's former fiduciaries seeking restitution of alleged investment losses and seeking prospective injunctive relief, was delayed, however, by a district court ruling dismissing these claims as a result of the approval of the settlement of private class actions raising similar monetary claims. (The Secretary appealed this dismissal; the progress of that appeal is discussed in this report under the Special Appellate and Supreme Court Litigation Division.)

In *Brock v. Nellis*, No. MCA 81-0245-RV (N.D. Fla.), there remained pending in the Eleventh Circuit an appeal from the district court's dismissal on statute of limitations grounds of the Secretary's complaint against two attorneys. The Secretary had alleged that the two attorneys acted imprudently and failed to comply with plan instruments when they participated in a decision to bid more than several times the appraised value of collateral (securing a defaulted loan) held by the Teamsters' Pension Fund.

In *Brock v. Robbins*, No. 78 C 4075 (N.D. Ill.), the district court issued its decision concerning the trial of the Secretary's claims relating to the Teamsters' Health and Welfare Fund. Although the district court held that the fiduciaries' actions there were "not good fiduciary conduct," it inexplicably denied relief. The Secretary appealed this decision to the Seventh Circuit.

As a result of the litigation in *Fitzsimmons*, *Robbins*, and *Brock v. Dorfman*, No. 82 C 7951 (N.D. Ill.), the Secretary accomplished his objectives of safeguarding the

future operations of the two Teamsters' Funds involved. More than $7 billion in pension fund assets will now be managed by a court-appointed named fiduciary. The Secretary effectively precluded abuses involving the Health and Welfare Fund that grew out of that fund's dependency on companies controlled by Allen M. Dorfman. This result was accomplished in a settlement that led to the dissolution of the Dorfman corporations and permanently bars Dorfman's associates from involvement with ERISA covered plans. Finally, over $17.5 million has now been paid to both funds in restitution for the losses resulting from the ERISA violations upon which the Secretary brought these cases.

The division continued to represent the Secretary in connection with his $36.5 million judgment obtained against Morris Shenker and companies he owned or controlled in *Donovan v. Schmoutey*, 592 F. Supp. 1361 (D. Nev. 1984). The division also maintained representation of the Secretary in the bankruptcy proceedings brought by Shenker and one of his companies following entry of the judgment, *In re Shenker*, No. 84-00001(3) (Bankr. E.D. Mo.), and *In re I.J.K. Nevada, Inc.*, No. 84-00915(3) (Bankr. E.D. Mo.). Early in the fiscal year, the division achieved a settlement of this bankruptcy claim, which has resulted in the Southern Nevada Culinary and Bartenders Pension Trust receiving $9 million in cash. In the *Schmoutey* litigation, the Secretary previously had obtained for the pension trust $3.7 million through a consent decree and approximately $15 million in real property and other collateral transferred to the pension trust from the defendants. Thus, the total restitution obtained through the *Schmoutey* litigation had a value of $27.7 million.

In *Brock v. The Equitable Life Assurance Society*, No. 86 C 1159 (D.D.C.), filed during the fiscal year, the Secretary alleged that Equitable, while acting as a court-approved investment manager and named fiduciary for the Teamsters' pension fund, imprudently allowed a lessee of fund property to sublease a portion of that property to a company that first proposed to use, and then did use, that property for the transshipment of hazardous wastes. In conducting this litigation, the division completed substantial documentary discovery, took two key depositions, and briefed and argued against Equitable's summary judgment motion for dismissal on statute of limitations grounds.

Following argument, the court invited Equitable to begin discussing settlement with the Secretary.

In *Brock v. Weiser*, No. 86 C 2129 (N.D. Ill.), filed March 27, 1986, the division represented the Secretary in a suit alleging ERISA violations arising from fiduciaries having purchased investment advice, accounting services, and legal counsel from firms owned all or in part by those same fiduciaries. The Secretary's complaint in this case joined the non-fiduciary firms as knowing participants in these fiduciaries' self-dealing transactions.

The division also developed and filed during the fiscal year the Secretary's complaint in *Brock v. Hanley*, No. CV-LV-86-421 LDG (D. Nev.). The complaint charged present and former fiduciaries of the Hotel Employees and Restaurant Employees International Union Welfare Fund (and its predecessor in interest, the Southern Nevada Culinary and Bartenders Health and Welfare Trust) with imprudently contracting for and maintaining a dental benefit plan at an unreasonably high cost due to a portion of dental plan fees having been paid to companies that provided few if any services to the fund. The complaint joined as knowing participants in these fiduciary breaches the dental plan corporate service providers and certain principals of those corporations. Although the Department of Justice represented the Secretary in court in this case, the division supervised various discovery sought by and demanded from the Department as well as formulated the Secretary's position on both restitution and injunctive relief.

In *Central States v. Baron*, No. 78 C 3702 (N.D. Ill.), the division obtained an order vacating the district court's prior approval of a settlement reached between Alvin Baron, a former asset manager for the Teamsters' Pension Fund, and the fund concerning the fund's claims that Baron improperly received certain fund assets. In obtaining this post-judgment relief on behalf of the Secretary, the division argued successfully that the settlement should be set aside for the purpose of allowing the Secretary to take discovery on issues affecting the settlement. The division planned to try to facilitate, between the fund and Baron, further negotiations to resolve the issues raised by the Secretary's intervention in this case.

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Office of Policy

The principal action of the Office of Policy in fiscal year 1986 was to establish and provide support for the Policy Review Board (PRB). Shortly after Secretary Brock took office, he ordered a review of the Department's policymaking process. In place at that time was the Policy Review and Coordination Committee (PRCC). Examination of the operation of this group pointed to several basic criticisms. For example, the PRCC dealt almost exclusively with regulatory policy. Every regulation regardless of policy importance was brought before that group for discussion. As a result the process had become "mechanical," failing to provide sound and effective policy guidance to the Department. Finally, the PRCC's membership was limited, thereby failing to provide the Secretary with the broadest possible policy advice.

As a result of this review, the PRB was established in January 1986 to serve as the Secretary's primary policy advisory body. Its members include the Secretary, the Under Secretary and all the agency heads. The Assistant Secretary for Policy is the chairperson and the Office of Policy serves as the secretariat. In its deliberations, in addition to the Assistant Secretary for Policy, attendees generally include the Under Secretary, the Solicitor of Labor, and the Deputy Under Secretaries for Congressional Affairs and Public and Intergovernmental Affairs. Agency heads who wish to attend may do so even if the issue being discussed does not directly involve their areas of responsibility.

In terms of discussion, the PRB seeks to address the major policy issues confronting the Department. In addition, members may seek the board's guidance on any given issue or may use the PRB as a means to resolve issues that cannot be agreed to at the staff level.

During its first year of operation, the PRB considered a wide range of regulatory and non-regulatory issues. Major regulatory items dealt with in FY 86 included: the PWBA plan assets rule, ESA's Davis-Bacon helper regulations, revisions in child labor safety rules, rules on homeworkers, OSHA's excavation standard, ETA's revised trade adjustment assistance regulations, OSHA's toxic materials handling standard, and MSHA's air quality regulations. Significant non-regulatory items considered by

the PRB included: the DOL legislative agenda for 1986, AIDS policy for the Job Corps, pension policy, drug testing of Federal employees, immigration reform, PWBA enforcement strategy, parental leave from work, and the recommendations of the President's Commission on Crime.

It should be noted that items presented before the board for discussion were generally of major policy significance. The board also initiated a method for expediting items of lesser significance by circulating material to appropriate members for approval. This "circulation only" approval process allowed the board to address more issues on an expedited basis.

Office of Program Economics

The Office of Program Economics informs the Assistant Secretary for Policy on issues dealing with the Employment and Training Administration, including the unemployment insurance system, the U. S. Employment Service, the Job Training Partnership Act and the Trade Adjustment Assistance Program.

During FY 1986 the office continued its work on unemployment insurance quality control. The office contributed on the technical aspects of quality control, as well as on the monitoring of interest groups and State reactions to this ETA initiative. Along with this, staff members helped in the issuance of extended benefits regulations.

The methodology used by the Department to establish adverse effect wage rates for the H-2 program was also reviewed. The review, which continued from FY 1985, resulted in a change in the methodology for the purpose of utilizing new U. S. Department of Agriculture survey data to calculate adverse effect wage rates for farm workers.

During FY 1986 the office provided a series of papers on JTPA issues, such as population targeting, allocation formulas and reporting requirements. In addition, the office produced a series of papers for the PRB on the issue of testing Job Corps enrollees for AIDS.

Office Of Regulatory Economics

The Office of Regulatory Economics acts as executive staff for the PRB on most regulations and related policy issues.

The office also coordinated the development of the Department's part of the President's second annual regulatory program under Executive Order 12498.

Among the major items on which the office assisted the PRB during the year were:

- OSHA. Final provisions dealing with asbestos, the hazard communications standard, electrical standards in construction, and recordkeeping requirements for tests, inspections, and maintenance; proposals dealing with formaldehyde, 1,3 butadiene, extension of the hazard communications standard beyond the manufacturing sector, and excavations, scaffolds, ladders and fall protection in construction.
- MSHA. A final rule dealing with ground control procedures in metal and non-metal mines and proposals for underground coal mines on ventilation, explosives and blasting, and electrical safety, as well as a proposal for changing the ionizing radiation exposure regulations.
- ESA. A final rule under the Davis-Bacon and related Acts together with a proposal for the treatment of helpers; a final rule under the Federal Employees' Compensation Act for medical benefits and a proposal for revised general regulations under the act; a final rule for compensating state and local government employees under the Fair Labor Standards Act and proposals under the same act dealing with homeworkers and recordkeeping, and, final regulations under the Longshore and Harbor Workers' Compensation Act.
- OASVETS. Proposals for a rule requiring reports from Federal contractors on the employment status of veterans.
- PWBA. A final rule on plan assets and proposals on participant directed individual accounts and civil penalties.

The office worked closely with various agencies of the Department to ensure that economic and other needed analyses were performed and met the requirements of the Regulatory Flexibility and Paperwork Reduction Acts, E. O. 12291, etc. The office also worked closely with the Solicitor and OMB in developing and defending the regulatory actions proposed by the Department.

Finally, the office supported PRB efforts to deal with a number of non-regulatory policy issues of major importance. In addition, the office worked on developing departmental policy in such areas as retirement, mandated health benefits, and indirect costs to be charged State governments under DOL programs.

Office of Economic Policy Analysis

The Office of Economic Policy Analysis provided staff support to the Secretary's Task Force on Economic Adjustment and Worker Dislocation, which began its year-long review and evaluation on December 17, 1985, providing background information to the task force members on the scope and dimension of the issues. The office also represented the Department on the OECD Local Employment Initiative Project. This project, being conducted by OECD member nations, involves analyzing and reporting on various local employment generating programs in use within the OECD member countries.

The office coordinated the Department's response to the OMB-mandated Information Collection Budget process. A working group has been set up to review the ICB process in order to provide for better coordination with the annual regulatory program and further reductions in the Department's burden hours. The office also developed a number of analytical reports on various economic and social issues. These included several analyses of the structural change in employment and relative wage rates within occupational and industry classifications, a report on the demographic characteristics of households and families, reports concerning employment and the minimum wage and reports analyzing both the Balanced Budget Act and the Tax Reform Act of 1986.

The office prepared economic updates and provided analytical interpretation and projections of key economic data to senior Department and Government officials. Analysis of labor force, compensation, and price data originating in the Bureau of Labor Statistics was emphasized; however, the full range of real and financial economic data was monitored. This broad coverage helped facilitate in-depth analysis of timely economic issues, such as the strength and durability of the economic recovery and international trade flows.

Office of Research and Technical Support

During fiscal year 1986, the Office of Research and Technical Support completed and reviewed several contracted studies in the areas of training, allocation formulas, labor relations, and pensions. Also, FY 1986 funds were obligated for three research procurements: (1) a project begun in FY 1985 by OECD on the role of large firms in assisting displaced workers; (2) a project on UI work search requirements, and (3) a new project to develop options for institutionalizing negotiated rulemaking and other means of cooperation in DOL decisionmaking.

In March 1986, the Historical Office was transferred to the Office of Research and Technical Support from OASAM. In addition to performing normal historical activities, the historian participated in the initial planning for the DOL's 75th anniversary in 1988 and assisted DOL policy-makers by attending and keeping records of PRB meetings.

Finally, further assistance to the Department's policymaking process was provided through the development of computerized tracking systems for DOL's regulatory, legislative, and policy items.

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Office of the Assistant Secretary for Administration and Management

As the principal organization responsible for the management of the Department's resources, the Office of the Assistant Secretary for Administration and Management (OASAM) continued its efforts to achieve efficient and economical operations, while emphasizing quality support service to the program agencies of the Department.

Comptroller

In the financial management area, the timely processing and delivery of salary payments was improved by: (1) instituting new processing modules for retroactive adjustments, cost of living adjustment (COLA) changes, and cash awards, and (2) completing the design and implementation of the first automated payroll interface with the recently adopted automated Personnel Management Information System (PERMIS).

Procedures were developed and efficiency was enhanced in several financial management functions by: (1) introducing statistical sampling procedures for leave audits and the simplification of statistical sampling procedures for auditing travel vouchers; (2) streamlining the internal control risk assessment and review processes; (3) piloting a third party draft procedure that would improve small purchase acquisition and payments procedures, and (4) developing policies and training which emphasized simplified procedures resulting from new travel legislation.

Directorate of Administrative and Procurement Programs

Administrative services and procurement and grants management functions were merged to establish the Directorate of Administrative and Procurement Programs (DAPP). Cost reduction and service improvement continued to be major concerns of DAPP, involving most of the staff in one way or another.

Release of 113,000 square feet of office space included the beginning, and the substantial completion, of the

long-awaited relocation of the Employment and Training Administration into the Frances Perkins Building (FPB). Space and telecommunications, facilities management, and supply and property staffs accomplished the task.

The Office of Facilities Management has been the primary labor source in the FPB. Costs on projects performed by in-house staff have been 30 to 50 percent lower than estimates from commercial sources. For example, $134,000 was saved in computer room alterations alone.

Implementation of the Department's long term procurement development plan began during the year. Months of intensive consultation with the program agencies produced action items in seven functional areas which have been approved by the General Accounting Office and the Department's Office of Inspector General

Directorate of Information Resources Management

During the year, through a competitive procurement effort, a host computer contract was awarded and implemented and the savings obtained were noteworthy—about a 65 percent savings from the previous contract. The DIRM telecommunications facilities, previously housed in two different buildings, were consolidated into a single facility in the Frances Perkins Building. It is anticipated that savings of more than $150,000 each year on rent and telephone lines will be realized.

Several other significant milestones which strengthened the management of ADP were achieved by DIRM. A Secretary's Order establishing two interagency committees—an ADP Technical Committee and an Executive Steering Committee (ESC)—was issued. The latter, chaired by the Under Secretary, met on several occasions to consider crucial policy questions regarding information resources management planning. As a result, DIRM completed and published the Department's first ever Strategic Information Resources Management (IRM) Plan. DIRM also developed, and the ESC ratified, a DOL telecommunications plan to design and implement a data communication system for the Department. Additionally, DIRM issued an end user microcomputing policy for the Department, instituted a new acquisition review process, and coordinated a study of an automated information system on interagency connectivity and information sharing. These

and other actions have significantly reinforced the Department's IRM oversight capability.

Under a project initiated by DIRM, an executive from the U. S. Postal Service (USPS) was placed in ETA as mail manager for the massive State Employment Security Agency mailings (fourth largest in the Federal Government). Results included new savings of $300,000 in FY 1986 from increased presort volume, and a projected rise in FY 1987 savings of $2.4 million from planned State participation in pre-sort, ZIP + 4 coding, and improved mail management. ETA, according to the USPS, now has the "most advanced mail management program in the Federal Government."

DIRM's joint review with agencies of paperwork burden proposals resulted in a reduction of 3.4 million hours from DOL's OMB-approved FY 1986 allowance.

Finally, under DIRM leadership, the Department's productivity improvement program was formally established. In accordance with Office of Management and Budget (OMB) guidelines, and with the cooperation of DOL agencies, DIRM prepared and forwarded to OMB a productivity improvement plan for the balance of fiscal year 1986 and all of fiscal year 1987. DIRM staff also worked with DOL agency officials to develop high priority productivity improvement initiatives that would become part of the fiscal year 1988 budget submission.

Directorate of Personnel Management

The Directorate of Personnel Management (DPM) implemented several initiatives in response to recommendations made in the 1985 General Accounting Office report on management in the Department of Labor. Among them are: (1) Human resource (HR) planning procedural guidance was issued and managers were instructed to incorporate their HR plans in the FY 1988 budget, (2) Position reference packages were developed for several of the Department's highest volume occupations. As part of this effort, approximately 27 standard position descriptions were drafted which could potentially cover nearly 3,000 positions, (3) Staff support and technical expertise was provided to the Performance Appraisal Steering Committee to formulate options and recommendations approved by the Secretary on improving management of the

Department's performance appraisal systems, (4) Staff support and technical expertise were provided to the DOL Management Working Group on Training in making recommendations, approved by the Secretary, to restructure supervisory training programs.

A major accomplishment, capping approximately five years of review, study and monitoring, was the final implementation of the GS-360 Equal Opportunity Compliance series to approximately the last 500 such positions in the Office of Federal Contract Compliance Programs. Also, the new GS-1102 Contracting Standard was implemented for over 100 positions. This completes the last portion of implementing several new Office of Personnel Management classification standards for approximately 12,000 positions in the Labor Department.

All Department of Labor personnel offices were converted to the new automated personnel system, PERMIS, in December 1985. An interface with the Department's payroll system was completed so that the latter could be updated frequently and accurately by personnel actions affecting pay and related data. The placement subsystem assures that employees who are entitled to it receive priority placement consideration. A training information system provides a record of training for each employee; administrative and management reports are provided overnight.

National Capital Service Center

During FY 1986, five automated systems were developed and implemented to improve productivity, including travel processing and tracking, invoice tracking, personnel advance file, parking management and processing, and telephone directory update. Each system was designed to provide managers and users with a viable tool for managing and processing actions in areas for which they have responsibility.

Enhancements in productivity in the financial area during FY 1986 were attributable in large part to the development of three automated systems. In particular, the automated relocation reimbursement tax computation has been the single most significant factor for productivity gains. Where the job of processing relocation tax schedules

was once difficult, laborious, and often inaccurate, the computer system has definitely improved the process.

During FY 1986, the Department continued its efforts to consolidate like administrative functions under one organization by bringing all small purchase and travel related finance functions into the center.

Office of Civil Rights

Early in FY 1986, the Office of Civil Rights (OCR) developed procedures to convert its decentralized structure from 10 regional cities and the national office to a centralized unit in Washington, D. C., to be more responsive to the mandates of the Job Training Partnership Act (JTPA). The reorganization will result in: (1) uniform and consistent practice in monitoring State and local JTPA programs and (2) more equitable and effective utilization of staff and increased productivity through improved workload management. One OCR staff person will be retained in each region to manage the Department's internal equal employment opportunity program under Title VII of the Civil Rights Act.

Equal Employment Opportunity (EEO) and Affirmative Action Programs for DOL employees and applicants were also integrated into OCR during the year. A primary emphasis of these programs is to increase representation within the Department's work force of those groups which are underrepresented, such as Hispanics, women, disabled veterans, and handicapped individuals. Actions taken to stimulate this process were: (1) distribution of current work force data to EEO coordinators and regional affirmative action officers; (2) assessment of, and priority attention to, major EEO concerns for components in the region; (3) training in special employment progams, and (4) provision of leadership in special programs and activities which focused on Hispanics, blacks, women, and handicapped individuals.

As of September 30, 1986, after a comprehensive review process, the methods of administration of 38 States and territories have been certified by OCR as sufficient to provide a reasonable guarantee of recipient and subrecipient compliance with the equal opportunity and nondiscrimination requirements applicable to the Job Training Partnership Act.

Office of Safety And Health

Safety and health functions were separately identified in a reorganization establishing the Office of Safety and Health (OSH) reporting directly to the assistant secretary. The goal of OSH is to ensure a safe and healthful workplace for all DOL employees and Job Corpsmembers. Job Corps Centers warranted major attention, particularly with regard to asbestos removal, ground water contamination, leaking underground storage tanks, fire safety, drownproofing, and off-center corpsmember safety.

OSH also continued to provide comprehensive health services to DOL employees, including treatment of injuries, physician-prescribed treatments, physical examinations, monitoring of blood pressure and diabetes, and educational programs on stress, high blood pressure, cancer, and smoking cessation. An Employee Counseling Services Program responded to both employee and management needs in the areas of alcoholism, drug abuse, emotional/mental, family, legal, and other problems.

Other areas of OSH focus included increased technical training of DOL safety and health managers, redoubled efforts to achieve a 3 percent reduction of Federal Employees' Compensation Act claims, improvements in the productivity of safety and health committees, and more thorough inspections of DOL workspaces.

OASAM Regional Offices

A significant accomplishment in the OASAM regional offices was the full implementation of PERMIS, the Department's version of the Air Force automated personnel management information system.

Several regions undertook actions to increase their own productivity through automation. Regions VI and IX worked jointly to develop electronic spreadsheets, leave audits, and accounting code sheets. Regions V and X jointly developed procedures to make SWIFT, a program which allows the transfer of ADP files and reports electronically between regions and the national office, operational. Region IV continued to develop a number of ADP systems designed to make labor intensive operations more efficient.

The release of an additional 139,636 square feet in the regions resulted in a savings of $1.4 million in annual rental costs. Consolidated Administrative Support Units

(CASU's) are being discussed and planned in several locations and the use of postage meters has been expanded to several regions to provide direct accountability for mail costs.

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Bureau of International Labor Affairs

During FY 1986, the Bureau of International Labor Affairs (ILAB) continued to direct its efforts to addressing international issues that relate to America's trade imbalance, immigration, technology transfers, developmental assistance to developing countries, and the impact of these matters on the American wage earner.

In international economic affairs, ILAB:

- Provided technical and research support to the inter-agency development of the Administration's trade policy action plan to improve U.S. trade imbalance, promote free-trade with Canada, increase trade with developing countries under the Generalized System of Preferences, and implement the workers' rights provisions of the Trade and Tariff Act of 1984.
- Assisted in the implementation of the Administration's steel industry program and the successful negotiation of voluntary export restraint agreements with an increasing number of countries.
- Played a principal role in the negotiation of new bilateral agreements on textiles under the Multi-Fiber Arrangement that better relate the level of imports to growth in the U.S. textile and apparel industry.
- Made substantial contributions in the preparation of annual reports mandated by Congress under the Export Administration Amendments Act of 1985 and the Caribbean Basin Economic Recovery Act and produced valuable research on issues of immigration reform, free-trade and related topics.

Working closely with international labor organizations, ILAB:

- Lobbied successfully to defeat Soviet attempts to increase representation of Communist Bloc employers on important conference committees in the International Labor Organization (ILO), won support for the censure of nations that seriously violate ILO's Convention on Employment Discrimination, and played a principal role in submitting ILO

Conventions No. 144 and No. 147 from the President to the Congress for ratification.

- Continued to provide and maintain quality programs for foreign visitors coming to the United States for study.
- Provided financial support for ILO's examination of successful labor-management cooperation efforts in developing training and retraining programs.

In foreign labor affairs, ILAB:

- Negotiated new cooperative agreements with the People's Republic of China, Sweden and Taiwan.
- Briefed Secretary of Labor Brock in preparation for his visits to China and Japan for bilateral negotiations with Chinese officials on U.S.-China technical cooperation and the Japanese concerning U.S.-Japan cooperative labor programs; ILAB provided technical staff assistance in support of the Secretary's meetings with the Israeli Minister of Labor on U.S.-Israeli cooperative labor programs.
- Continued to provide assessments of labor conditions and institutions on Caribbean Basin Initiative (CBI) countries. In concert with this effort, ILAB initiated a series of seminars on improving work force development programs in CBI countries.
- Maintained short- and long-term development assistance support to the governments of Saudi Arabia, Egypt, Guinea, Yemen, Zimbabwe, Nigeria, Cameroon, The Bahamas, and selected other friendly countries.
- Continued to advance the application and transfer of U.S. technologies to human resource development efforts abroad through use of the Center for Advanced Learning Systems.

Trade Policy

During FY 1986, ILAB was deeply involved in activities directed at addressing America's trade imbalances. Acting through its membership in the various inter-agency committees charged with trade policy functions, ILAB:

- Participated in inter-agency preparations for the General Agreement on Tariffs and Trade (GATT) Ministerial meeting in Punta del Este, Uruguay, which launched a new round of trade negotiations

and was part of the U.S. delegation to the ministerial meeting;

- Participated in negotiations between the United States and Canada directed at liberalizing free trade areas and nontariff barriers to trade. ILAB coordinated activity on Canadian investment and trade barriers related to culturally sensitive industries in the free-trade area talks.
- Assisted in the inter-agency consideration of unfair trade practices cases against foreign countries that discriminate against U.S. exports as part of the President's trade policy action plan to improve the trade balance and to counter mounting protectionist pressure by the Congress. Of particular importance was the 301 case involving semiconductors from Japan.
- Assisted in implementing the Administration's trade policy for developing countries under the General Review of the U.S. Generalized System of Preferences, which requires advanced developing countries to accept a level of obligations under the international trade system consistent with their level of economic development.
- Took the lead in implementing the worker rights provisions of the Trade and Tariff Act of 1984, which can affect certain trade and investment assistance to developing countries which do not take steps to afford their workers internationally recognized worker rights.
- Participated in policy activities relating to bilateral trade issues with Mexico and negotiations which led to its accession to the GATT and discussions with Japan on various issues, such as the renewal of the Nippon Telephone and Telegraph (NTT) agreement and automotive trade and with the European community on discriminatory procurement.
- Continued, as a principal member of U.S. delegations, in the negotiation and renegotiation of bilateral agreements on textiles within the framework of the Multi-Fiber Arrangement (MFA). Three new bilateral agreements were concluded, increasing the total of agreements to 37. Agreements due to expire during FY 1986 were renegotiated with seven suppliers. ILAB continued to share inter-agency efforts to carry out the White House criteria of December 16,

1983, which committed the Administration to relate growth in textile and apparel imports to growth in the U.S. textile and apparel industry. During FY 1986, the foregoing efforts involved approximately 115 consultations with some 21 countries.

- Participated in the Administration's successful efforts, over objections of the Congress, to extend the Multi-Fiber Arrangement (MFA) framework which was due to expire in mid-1986. The Bureau was active in Executive Branch efforts to defeat passage of proposed legislation, vetoed earlier by the President, which would have replaced the MFA and severely reduced textile imports to the U.S. On July 31, 1986, the GATT Textiles Committee formally adopted a protocol which extended the MFA through July 31, 1991, and strengthened some of its provisions, chief among which is to cover all textile fibers. With renewal of the MFA, the pending legislation was subsequently defeated by a vote in the House of Representatives.
- Prepared various information and data for, and participated in, the Third Tripartite Technical Meeting for the Leather and Footwear Industry, held in Geneva under the auspices of the ILO.

Advisory Committees

During FY 1986, ILAB continued to provide staff support to the inter-agency Working Group on Steel of the Economic Policy Council, a group charged with examining problems faced by the domestic steel industry. The Bureau participated in meetings of the Organization for Economic Cooperation and Development (OECD) steel committee which focuses its activities on the development of long-term solutions to the problems of international trade in steel. Working for the full implementation of the President's program for the steel industry as announced in September 1984, ILAB participated in the inter-agency teams which negotiated voluntary export restraint agreements with six more countries, bringing the total number of agreements to 18.

The Bureau continued to provide staff support to the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC) and the Office of the U.S. Trade Representative on issues of concern to labor involving

trade negotiations, the operation of trade agreements once entered into, and other matters in connection with the administration of U.S. trade policy.

The LAC and the Steering Subcommittee were particularly busy in FY 1986 because of preparations for the new round of multilateral trade negotiations. Two members of the committee traveled to Punta del Este, Uruguay, as advisors to the U.S. delegation to the Ministerial Meeting which launched the new round of multilateral trade negotiations.

Finally, ILAB's representative chaired the Subcommittee on Employment, Productivity and Adjustment of the Federal Coal Export Commission (FCEC), a committee established by the International Security and Development Cooperation Act of 1985 to promote increased exports of U.S. coal.

Immigration

During FY 1986, ILAB continued to participate in the formulation of U.S. immigration policy, to coordinate this issue within the Department and to prepare position papers on international labor flows. The Bureau worked actively with the Administration to achieve enactment of immigration reform and control legislation. ILAB's Immigration Policy Group provided policy analysis on labor-related immigration issues ranging from illegal immigration to trade in services to senior Labor Department policymakers, the Council of Economic Advisors, the Departments of State and Justice, and the Congress.

Immigration policy specialists from ILAB continued to play the lead role for the U.S. Government in international organizations on issues relating to international labor flows. They served as the U.S. representative to the OECD Working Party on Migration, as the U.S. expert on the OECD Monitoring Panel on Migrant Women, and as delegate to the U.N. General Assembly Working Group on the Elaboration of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families.

ILAB conducted analyses of various aspects of legal and illegal migration to the U.S. and prepared U.S. Government position papers on immigration issues for major international conferences, such as the 1986 ILO Asian Regional Conference. It expanded its computerized

data bank to include 1980 Census data on the foreign-born and U. S.-born and enlarged its annual INS data on arriving immigrants between 1972 and 1985. The Bureau followed up its path breaking study on legal immigration by females to the United States since 1930 with a paper, "Sex Differentials Among the U.S. Foreign-Born Labor Force: A Comparison of Stock Versus Flow Data," presented at the October 1985 meeting of the Southern Regional Demographic Group in Austin, Texas. An article on "Women: The Majority of All Newcomers to the U.S." is to be published in American Women 1987: A Report in Depth. Lastly, the immigration staff actively participated in the Department's inter-agency Task Forces on Adverse Effect Wage Rates and Piece Rates for Foreign Agricultural (H-2) Workers.

Foreign Economic Research

During FY 1986, the Bureau's foreign economic research program continued to assess the effects of foreign economic developments on the earnings and employment of U.S. workers. ILAB-supported research:

- Reexamined the trade and employment effects of the U.S.-Israel free-trade area.
- Analyzed employment and adjustment programs in support of bilateral U.S.-Canada free-trade area negotiations.
- Investigated the U.S. employment effects of eliminating the Manufacturing Clause of the U.S. Copyright Law.
- Explored various remedies for the textiles, apparel, and footwear industries.
- Provided estimates of the elasticities of substitution between imports and home goods for the U.S. for publication in a professional journal.

ILAB also participated in the preparation of the Department of Commerce's report to the Congress under Section 126(a) of the Export Administration Amendments Act of 1985, which required a comprehensive review, including the employment effects, of removing the ban on Alaskan North Slope oil exports; shared in the preparation of the second annual report to the Congress under Section 216 of the Caribbean Basin Economic Recovery Act (CBERA) on the U.S. employment effects of the Act, and took part in the preparation of the Office of Management

and Budget's first annual report to Congress under Section 309 of the Defense Production Act on the effects of offsets in defense-related export sales on the U.S. economy, industrial competitiveness, and industrial base.

In support of ILAB's extramural research program, 19 new contract research reports on international economic issues and labor were initiated under an intra-agency agreement with the Employment and Training Administration (ETA) as funding agency.

International Organizations

During FY 1986, ILAB continued its active involvement in international organizations, particularly the ILO and the OECD. The Bureau guides participation in the ILO in coordination with Labor Department domestic units, other U.S. Government agencies, employer and labor organizations, governments, workers and employers worldwide. The U.S. priorities in the ILO are guided by the objectives set by the President's Committee on the ILO, chaired by Secretary of Labor Brock, and by its two sub-groups, the working-level Consultative Group and the Tripartite Advisory Panel on International Labor Standards. These continuing objectives focus on preserving the ILO's machinery for the supervision of international labor standards (with attention to the vigorous pursuit of Communist Bloc violations of human rights conventions and their efforts to dismantle the machinery), promoting U.S. priorities and cost effectiveness in ILO program activities, increasing the use of private sector resources in the ILO, and discouraging ILO activities that are hamrful to U.S. interests.

ILAB's representatives to the ILO lobbied effectively with government, worker and employer delegates to the 1986 ILO Conference to defeat a Soviet attempt to increase the number of so-called bloc employers on important Conference committees.

The Bureau initiated and coordinated efforts leading to a consensus on some highly volatile political resolutions, two of which had been proposed by Communist workers.

ILAB offered the ILO a $100,000 grant to examine various programs, particularly those relating to the introduction of new technologies. In conjunction with the grant, ILAB recommended that the ILO convene a seminar in Turin, Italy, at the International Center for Advanced Technical and Vocational Training in October 1986 to

evaluate and develop general conclusions based on the case studies. The centerpiece for the meeting was the evaluation of a joint venture at the New United Motors Manufacturing Inc., (NUMMI) automobile plant in Fremont, CA.

ILAB facilitated the referral of Administration-supported Conventions No. 144 on Tripartite Consultation and No. 147 on Minimum Standards on Merchant Ships to Congress for advice and consent to ratify. This action is significant since these conventions were submitted for U.S. Senate consideration for the first time in 20 years.

As the result of effective lobbying efforts of the U.S. delegation, headed by ILAB, with government, worker and employer delegates on the Committee on the Application of Conventions and Recommendations, the 1986 ILO Conference leveled its most severe form of censure against the Government of Iran for serious and repeated discrepancies in the application of the Discrimination in Employment Convention. ILAB also lobbied for and supported a successful challenge to the credentials of the Nicaraguan employer delegates to the ILO Regional Conference of American States in March 1986. The Western employers' claim that the Nicaraguan employers were not the most representative employers' group in Nicaragua was subsequently upheld in the Conference Plenary. Lastly, with regard to the ILO, the Bureau continued to maintain quality programs for ILO Fellows who visit the United States, despite a major reduction in ILAB staff because of budget constraints.

ILAB represented the U.S. Government in meetings of the OECD's Manpower and Social Affairs Committee (MSAC) and coordinated participation in its subsidiary bodies. ILAB strengthened OECD activities dealing with employment, structural change, technology, and labor-management cooperation and participated in three manpower evaluation panels which examined the effectiveness of labor market programs to assist dislocated workers, occupational training and retraining measures for specific target groups, and the decentralized delivery of manpower measures. ILAB completed planning and preparations for OECD Labor Ministerial scheduled for November 1986. At this Ministerial, Secretary Brock introduced the session on manpower development and adaptation. The Bureau also assisted in the planning and implementation of OECD comparative studies on technological change and the service sector and the role of large firms in job creation.

Labor Ministries/Information Exchanges

Cooperative programs, referred to as Department-to-Ministry programs and coordinated by ILAB with ministries of labor from industrialized nations, continued in FY 1986. In April 1986 Secretary Brock visited the People's Republic of China at the invitation of Zhao Dongwan, Minister of Labor and Personnel. The "Labor Diplomacy" mission was to exchange views with Chinese officials on labor affairs and to discuss the growing technical cooperation that is developing between the Labor Department and counterpart Chinese agencies. As an outgrowth of the visit, three new cooperative projects, two in labor statistics and one in mine safety and health, are expected to begin in fiscal 1987 under the State Department Science and Technology Agreement.

Following the China visit, Secretary Brock met in Japan with then-Minister of Labor Yu Hayashi and other high-ranking officials and representatives of management and labor. The visit reaffirmed the seven-year old cooperative U.S.-Japan labor program between the U.S. Labor Department and the Japanese Ministry of Labor. As a direct result of the expansion of the program with Japan, bioassay results—which are laboratory tests to determine the carcinogenicity of industrial chemicals—are now being exchanged between scientists from the National Institute of Environmental Health Sciences (NIEH) and the bioassay laboratory of the Japanese Ministry of Labor. The two groups agreed also to exchange and study tumor specimens obtained in their respective laboratories. NIEH scientists considered this new dimension of particular scientific importance which can lead to additional savings of time, money and lives in both countries.

In FY 1986, the cooperative program with Australia continued. John Uhr, Assistant Secretary of Australia's new National Occupational Health and Safety Commission, completed a nine-month work/study program in OSHA/DOL.

In May 1986, Deputy Under Secretary Robert W. Searby signed an agreement with the American Institute in Taiwan to provide technical assistance to the Department of Labor in Taiwan. The initial areas for assistance included: occupational safety and health, vocational training, employment service operations, mine safety and health, and labor statistics. It is anticipated that two

occupational safety and health seminars will be conducted in Taiwan in FY 1987 as the initial cooperative activity.

In January 1986, Secretary Brock and Moshe Katsav, Israeli Minister of Labor and Social Affairs, met in Washington to review the activities already taken and planned under the U.S.-Israeli cooperative labor program established in 1979. They expressed full support for closer cooperation in all areas under discussion and agreed to formalize them in a Memorandum of Understanding.

FY 1986 witnessed the initial implementation of the cooperative agreement in the occupational safety and health field between the U.S. Labor Department and the Swedish Ministry of Labor. In December 1985, discussions were held between U.S. and Swedish members of the Joint Coordinating Committee in Sweden where agreement was reached that over the next two years cooperation should focus on the following subjects: education and training, safety at chemical plants, new technology and the total work environment, ergonomics, and reproductive hazards. In January 1986 Anna-Greta Leijon, the Swedish Minister of Labor, met with Secretary Brock and the two reconfirmed their commitment to the cooperative agreement.

Because the growing use of new technologies in American workplaces raises many issues of concern to the Department, ILAB coordinated the formation of an intra-departmental Labor and New Technologies Committee to assess and document the technology and employment-related concerns of each Departmental agency. The committee's findings and recommendations were accepted by the Under Secretary; the Assistant Secretary for Policy was charged to coordinate a program to ensure that the Department meets its obligation to provide leadership in this significant era of change.

American Labor Attaches

During FY 1986, the Departments of Labor and State held conferences in New Delhi for Foreign Service labor attaches stationed in Asia, and in Brussels for labor officers stationed in Europe. Regional workshops developed labor policy and program recommendations for labor exchange, labor information, and technical assistance programs.

Following a recommendation by ILAB, the Department of State strengthened the annual labor report instructions to include key labor indicators. ILAB prepared labor trends reports on over 60 countries for distribution to the public through electronic data bases as well as in hard copy. Also, the Bureau participated in the Foreign Service promotion panels and in management of the Foreign Service through the Board of the Foreign Service and the Board of Examiners.

Caribbean Basin Initiative

ILAB which had participated in the formulation and initial implementation of the Administration's Caribbean Basin Initiative (CBI), joined in inter-agency team visits to Central American and Caribbean nations to negotiate the entry of 21 countries into the CBI program. The Bureau provided assessments of labor conditions and institutions in CBI countries to interested parties in the public and private sectors in Country Labor Profiles produced by ILAB. As part of ILAB's participation in the inter-agency CBI task force, the Bureau initiated a series of seminars which brought together representatives from the government and private sector to emphasize the need for improved workforce development programs to support economic development. The first seminar, On-the-Job Training for Productivity, was held in April 1986. Additional seminars are planned for FY 1987.

Other International Technical Cooperation

ILAB continued its efforts towards providing effective technical assistance to developing countries to further U.S. foreign policy objectives relating especially to labor and trade. With virtually all Labor Department overseas technical cooperation activities support by non-DOL funding sources, the Bureau assisted the U.S. Agency for International Development (AID) through numerous short- and long-run technical assistance missions in Egypt, Guinea, Somalia, Yemen (Sanaa), and twice in Zimbabwe. ILAB helped AID develop a Training Needs Assessment Guide for use by AID missions worldwide.

Under two projects to promote U.S. exports, ILAB provided a short-term consultant to Nigeria to evaluate the long-run viability and potential of their Industrial Training

Fund, and arranged a visit by a Cameroon Ministry of Labor official who met with potential U.S. suppliers to a major vocational training project in that country.

ILAB continued its World Bank-financed technical cooperation project in The Bahamas for upgrading the vocational technical training system through assistance to the Ministry of Education, Ministry of Health, College of the Bahamas, Hotel Training College and the National Training Center. Three DOL staff were long-term advisors in Nassau and were assisted by 25 short-term specialist/advisors. More than 100 Bahamians received short- or long-term training in the U.S. under this project.

ILAB, through its Center for Advanced Learning Systems (CALS), collaborated with the United States Information Agency (USIA) to arrange several seminars and tours for representatives from nine Latin American and Caribbean countries in order to showcase the newest and most innovative of U.S. techniques and technologies for human resource development.

The Bureau continued to respond to the technical assistance needs of the Saudi Arabian Vocational Training and Construction Project (VOTRAKON). Fiscal 1986 was the first full year of operation of Phase II of the VOTRAKON project. The primary objective of Phase II was to implement programs begun in Phase I aimed at helping Saudi Arabia expand and modernize its kingdom-wide vocational training system through comprehensive training and the design and construction of training and housing facilities.

With a complement of 14 full-time American DOL advisors, the project:

- Aided the Saudis in enrolling nearly 10,000 students in vocational programs and 1,250 in pre-vocational programs and supporting about 1,100 training staff employed in the vocational centers and 280 in the pre-vocational centers.
- Continued curriculum development and intensified instructor training in the use of already-developed curriculums.
- Implemented a program of Career Exploration at the Riyadh Vocational Training Center for 45 students.
- Carried out a pilot program of competitive events in Riyahd, Dammam and Jeddah for more than 200 students.

- Intensified its daily work with Saudi staff in the Instructor Training Institute and the Instructional Media Development Center to develop the infrastructure necessary for efficient operation in such areas as computer utilization, contract implementation and control, printing, video and audio media development, graphics production, and records management.
- Facilitated development in the on-the-job training (OJT) area registration, certification, libraries, training and research systems, as well as the training of Saudi staff at the national and regional offices to carry out the activities required within these systems.

In response to ad hoc requests for technical assistance from friendly developing nations, ILAB also coordinated numerous visits and exchanges of personnel from other DOL components as part of its development assistance activities.

International Visitors

During FY 1986, ILAB arranged programming services for seven multi-country study teams that were sponsored by the Agency for International Development. In addition, ILAB programmed visits to various DOL agencies for nearly 240 representatives from 59 countries, primarily at the request of the various international programming agencies in the Washington, D.C., area.

Inter-Agency Working Group

ILAB was an active member of the Inter-Agency Working Group on Private Sector Development in Africa which is focusing on methods of facilitating domestic and international investment in Africa. In support of private sector investment, the group visited nine countries in Sub-Sahara Africa to discuss aspects of labor force development.

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Women's Bureau

Early in FY 1986, the Women's Bureau held a national conference on women's employment issues to observe the 65th anniversary of its founding and to reaffirm its commitment to serve all women in the Nation's work force.

A centerpiece of the year was an initiative launched in support of goals articulated by Secretary of Labor William E. Brock. The Bureau gathered constituents at 14 meetings around the country to address the target populations of women who maintain families and displaced homemakers. Programs to assist women in these groups are in developmental stages.

Work-family issues loomed large in planning programs and publications. The Bureau provided leadership within the Labor Department on work and family issues and participated in developing policy concerning parental leave legislation.

The Bureau continued to expand its information base, collecting and analyzing data to serve as guidelines to future program efforts. New and revised publications were developed on women's employment issues.

At national headquarters and in the 10 regional offices, Bureau staff worked closely with women's organizations, commissions for women, the private sector, employers, union representatives, employment program operators, educational and social service agencies, and government at all levels.

Continued attention was given to the growing effect of technological change on women's employment. As we approach the year 2000, the Bureau is devising new strategies for preparing women for challenges in an increasingly sophisticated work environment.

New efforts were made in response to particular needs of teenage women, women veterans, women advancing up the corporate ladder, and women seeking better pay and benefits. Bureau programs remained strong in pursuit of employer support for child care and for consideration of women's need for alternative work scheduling.

Technical assistance was widely offered to constituents throughout FY 1986, and demonstration projects were developed into models for replication around the country.

Formulating Policy

The Women's Bureau shared a lead role with the Office of the Solicitor in the review of the U.S. Code and departmental regulations for instances of sex bias. During fiscal 1986, the Bureau prepared written comments on 12 separate policy documents in its policymaking role to ensure that proposed legislation and regulations consider the needs of women in the labor force.

Input generally occurs when legislation, draft testimony, or departmental reports are proposed. For example, the Bureau looks at training programs to see whether support services such as child care assistance and transportation are included. In pension law, the Bureau supported the provision that the pension rights of a surviving spouse be assured unless the spouse signs a waiver. During fiscal 1986, the Bureau provided leadership within the Department on work-family issues and participated in developing policy concerning parental leave legislation.

Along with legislative analysis, the Bureau offers technical assistance to constituents who write or telephone for help. Current court cases, as well as existing laws and regulations, are cited to inform employers and employees of their legal rights.

The Bureau also regularly publishes brief explanations of laws that have an impact on women's employment, providing the public with essential information.

Anniversary Conference

In November 1985, the Women's Bureau convened a national conference in Washington, D.C., to observe its 65th anniversary. The Bureau was established by Congress in 1920.

Secretary of Labor William E. Brock addressed the conference, which was attended by more than 600 constituents. Regional administrators of the Bureau led workshops which covered themes of: achieving equity in the workplace; creating change; technology, the service economy and women's employment; prospects and problems; breaking the poverty cycle; shaping job training and educational policies, and the world economy and working women.

In addition, a panel discussion was led by WDVM-TV reporter Carol Randolph. The conference marked the premier showing of a Women's Bureau film documentary

on working women from 1920 to 1985; "There's No Such Thing As Woman's Work," and release of an anniversary publication, "Milestones: the Women's Bureau Celebrates 65 Years of Women's Labor History."

Women Who Maintain Families, Displaced Homemakers

A goal of the Women's Bureau in FY 1986 was to improve employment opportunities for two target groups: women who maintain families (single heads of households) and displaced homemakers.

The Bureau, working with other Federal agencies, held a total of 14 meetings across the country—2 in the national office and 12 in regional offices—with attendance by employers, educators, state welfare specialists, researchers, and representatives of unions and community-based organizations. The objective was to gain information from experts outside the Department of Labor on employment problems faced by women in the target groups. Recommendations made at the meetings are under consideration.

The Bureau continued its contact with the Displaced Homemakers Network, established in 1979 to help women toward economic self-sufficiency when they find themselves suddenly deprived of financial support through divorce, separation, or the death of a spouse. Since 1982, the network has been funded by grants from the Women's Bureau, using money designated for training and employment purposes.

The Displaced Homemakers Network provides services to 716 local programs reaching more than 200,000 women a year, with FY 1986 figures showing continued growth.

As an outcome of Bureau-led discussions on displaced homemakers, numerous representatives of Federal agencies and community groups met in April to discuss the needs of older women workers.

Child Care Services

A major thrust of the Women's Bureau has been the promotion of employer-supported child care. Initiatives include information and educational programs, conferences, technical assistance, publications, and distribution of a videotape.

National and regional staff have been very active in providing guidance to companies, personnel managers,

advocates, students, and others seeking help in dealing with child care issues. Bureau staff participate in national, State, and local conferences on employer-supported child care.

In the spring of 1986, the Bureau sponsored an Employer Child Care Dialogue for leaders involved in aspects of the child care industry to examine barriers and strategies for providing services to working parents. Among issues raised were the occupational status of child care workers, quality of care, affordability, space, employer options, and employee benefit plans.

The Bureau renewed funding for the fifth and final year of participation in a Rockefeller Foundation-sponsored effort aimed at minority single heads of households. The Foundation funded the job training of the women; the Bureau provided funding for the child care component. Three separate projects received the combined support. Through demonstration projects, the Bureau institutionalized within a job-training facility the concept of providing child care assistance to trainees and promoted the concept of employer-sponsored child care in communities.

Through national and regional offices, the Bureau continued to distribute free copies of its popular publication, "Employers and Child Care: Establishing Services Through the Workplace," and the Bureau's free-loan film, "The Business of Caring."

Impact of Technology

The Women's Bureau had a key role during FY 1986 in several research and action projects to help employers and employees deal with the impact of high technology.

In one, the Bureau funded a three-phase effort by the National Academy of Sciences (NAS). The first phase required a review of the literature on state-of-the-art technology in the workplace, which resulted in a publication, *Technology and Employment Effects*, distributed by the NAS.

In the second phase, the NAS commissioned 15 papers based on the outcome of the literature review and published report focusing on the effect of high technology on job opportunities for women.

To complete phase three, the papers were summarized in a final NAS report, *Computer Chips and Paper Clips*,

presented at a conference hosted in late September by the NAS.

In a related effort, the Bureau engaged in an examination of the impact of office technology on women in clerical work. The project included publication of a booklet, *Women and Office Automation: Issues for the Decade Ahead*; a symposium on women and clerical work in the electronic office; a conference of experts in the field held at the offices of the National Academy of Sciences, and a report on the conference. This report, *Women, Clerical Work, and Office Automation: Issues for Research*, was published by the Women's Bureau in late summer.

Teenage Women

Teenage women often need help to break through occupational sex-role stereotyping and to resolve other difficulties facing them at the time of entry into the world of work. The Women's Bureau addressed this need in a number of ways.

One program, called WINC, for Women in Nontraditional Careers, aims at expanding the range of career selection for students. It works through integrating into the high school curriculum a series of lessons for use by guidance counselors, teachers and administrators working with young women and men. Lessons encourage students to consider and prepare for a broad range of career choices by helping them overcome the limiting effects of sex-role stereotyping, thus easing their transition from school to work.

In October, participants in the National Correctional Education Conference, held in Washington, D.C., were introduced to the WINC program. This is one example of the extended use of WINC in training and educational programs serving adolescent mothers, displaced homemakers, women reentering the work force, and single heads of households.

Efforts were underway to phase out the Bureau's active involvement in the WINC initiative by FY 1988. In line with the Administration's goal of ultimately placing responsibility at the community level, expertise is being developed outside the Bureau that would perpetuate the WINC concept and approach, thus bringing the Bureau's role to a successful conclusion.

In another project, the Bureau provided funding to the Young Women's Christian Association (YWCA) to develop a model program to increase the employability of teen mothers, high school dropouts, and other young women with employment disadvantages. The YWCA convened a forum of their national and regional leaders to conceptualize the scope and strategy of the program.

Pilot projects by the YWCA in Boston and Miami offered remedial education, personal counseling, and employment assistance to this target population through a system of integrated community resources and services.

A third example of Women's Bureau concern for the preworking-age woman is a pilot project, conducted at Chicago's Orr High School, called ELLA, for Enrichment for Latinas Leading to Achievement. Initiated by the Bureau, ELLA encourages female Hispanic students to finish high school and to pursue further training leading to well-paid nontraditional careers.

Women Veterans

For a number of years, the Women's Bureau has been calling on women veterans to transfer their military skills to profitable use in the civilian job market. Efforts have been made on a regional basis to communicate with women about to be separated from the service, alerting them to their special potential and job opportunities outside military service.

A Women's Bureau project was completed in fiscal 1986 by the American Veterans Committee, identifying some problems found with the Employment Service in dealing with female veterans. In response, a followup project will permit the Bureau to work directly with an employment service office that has demonstrated some success in recruiting, training, and placing women veterans.

This new project will develop and implement a Women Veterans Placement Program offering both individual and group training to promote more effective job placement with longer retention rates. Services will be provided by the Everett Job Service Center of Washington State's Employment Security Department. The program is a joint undertaking of two Labor Department agencies, the Women's Bureau and the Veterans' Employment and Training Service, with the Bureau supervising the project and providing technical assistance.

In addition to offering direct service to female veterans, training them and placing a high percentage in unsubsidized employment, the program will develop a "how to" guide and final report for use in other regions.

Corporate Advancement

Despite recent gains, only about 5 to 7 percent of mid-level and upper-level corporate management jobs are held by women; at the senior management level, women account for only 1 to 2 percent of the positions.

For years, the Women's Bureau has taken steps to penetrate this "invisible ceiling" placed on women's advancement up the corporate ladder. A few years ago, the Bureau embarked on a project with Wellesley College's Center for Research on Women to analyze programs, practices and other factors in major corporations which promote or facilitate women's upward mobility.

The results of that research now are being used in another project, which will develop a model program to help move women up the corporate ladder by means of cooperative efforts of government, business, industry, and academia. The work is being done under a 1-year grant to the University of Massachusetts at Amherst, funded by the Women's Bureau.

The project provides for input from top management of selected corporations—financial, entertainment/communications, and technology/manufacturing. Through a series of roundtable discussions, planned and coordinated by a national advisory committee, corporate representatives will provide their experiences and expertise to develop a model for replication by corporations committed to the advancement of women.

Employment in Highway Construction

An interagency agreement was signed by the Women's Bureau, the Employment and Training Administration, and the Federal Highway Administration to develop strategies and a program to reduce barriers to the employment of women in highway construction jobs. The project will be jointly funded by the three agencies.

Objectives include increasing the number of women employed by highway construction contractors and developing methods to overcome barriers faced by women in

securing employment in skilled and semi-skilled highway industry jobs.

One of the results expected is the accumulation of a data base including statistics, recommendations, and resources for developing strategies. A model program will be designed for field testing in several locations throughout the country. A report of the project will be prepared and a tested model program will be ready for replication by a wide range of constituents.

JTPA/Voc Ed Linkage

The Women's Bureau has consistently worked to ensure that employment and training and vocational systems adequately met the needs of women.

The Bureau, along with the Displaced Homemakers Network, has been bringing together Job Training Partnership Act (JTPA) and vocational education leaders to find areas where collaboration can create more cost-effective programs and improved delivery of services to women.

Workshops were held in the Bureau's 10 regions to develop strategies for helping more women take advantage of training opportunities provided by both JTPA and the Carl D. Perkins Vocational Education Act.

The Bureau's new training initiative helps bridge the gap between public programs and women's specific needs, ensuring that these needs are met at the State and local levels.

Women Offenders

Apprenticeship training for women in prison is one of two distinct efforts of the Women's Bureau to help equip incarcerated women with job skills and other support they will need upon their release in order to function as contributing members of society.

The Bureau developed a cooperative relationship with the Bureau of Apprenticeship and Training and with the Bureau of Prisons. As a result, in the 5 Federal institutions that house women and in at least 17 State prisons, women inmates have available to them apprenticeship training in such skilled trades as plumbing, painting, auto mechanics, firefighting, and machine repair.

The Bureau also started The Network on Female Offenders, an informal association of organizations and

individuals from the District of Columbia, Maryland, and Virginia.

At quarterly meetings during FY 1986, members of the network discussed such matters as court cases, recent legislation, private agency programs, and government initiatives affecting women in prison. Health issues were covered as well as concerns such as attitudinal problems and the availability of nontraditional job training.

Commissions on the Status of Women

The Women's Bureau in fiscal 1986 continued to provide technical assistance to State, county, and local Commissions on the Status of Women, helping set up new commissions, assisting with program information, and providing linkages to employment and training resources.

In FY 1986, 243 commissions were in existence. A national office of the National Association of Commissions for Women was established in Washington, D.C., to strengthen the commissions' bond with the Women's Bureau and to provide a more visible national presence for the commission movement.

Women's Bureau regional administrators cosponsored workshops with commissions during FY 1986 covering projects and programs in areas such as job training, career planning strategies, women in nontraditional careers, and child care.

Immigrant, Refugee, and Entrant Women

A "new wave" immigrant population of Southeast Asian, Haitian, and Hispanic women had entered the United States in large numbers since 1980, but little was known about the status of these women in the U.S. labor force.

The Women's Bureau embarked on a study to collect information as the basis for a program to serve the employment needs of the newcomers. The work was funded by the Bureau and conducted by the American Association of Community and Junior Colleges, based in Washington, D.C.

Information was gathered at the local level through dialogues held in areas where there was a concentration of each immigrant population: Brownsville, TX, Long Beach, CA, and Miami, FL. The dialogues provided forums for

service providers, community-based organizations, and members of the newcomer populations.

Through the Women's Bureau regional offices encompassing the three cities where discussions were held, job training programs began in fiscal 1986. In the Brownsville project, it was determined that many participants needed basic language and academic instruction in Spanish before they could proceed to studies in English; training is a joint effort with the private industry council. In Miami, part of the training was delivered in the Creole dialect. Training in Miami and Long Beach is done in cooperation with local community-based organizations.

In addition to language and job skill needs, these women also needed help with seeking a job, filling out an application for employment, and such basic practices as travelling to and from a job and notifying an employer if they could not come to work. Child care was needed, and this service also was provided in the program.

Work-family conflict came into play, as many of these women came from a culture where home life and roles in the community were widely different from those in this country. Therefore, they also were provided courses to help them adapt to their new environment.

International

The Bureau's director participated in meetings held in Paris, France, of the Organization for Economic Cooperation and Development (OECD), serving as a vice chair of OECD's Working Party No. 6 on the Role of Women in the Economy. Through the OECD, the Bureau provided leadership in determining issues significant for discussion within the group.

The Women's Bureau continued to work with the Interdepartmental Task Force on the United Nations Conference, led by the Department of State. The task force was established to plan United States participation in the closing session of the United Nations Decade for Women, held in Nairobi, Kenya, in July 1985, and is doing followup work. Bureau staff participated in post-Nairobi conferences on women, notably in the Kansas City region, where the Bureau's regional administrator was instrumental in the national report-out conference, "Beyond Nairobi," of the National Women's Conference Committee.

The Bureau received numerous foreign visitors and U.S. labor attaches and conducted briefings on how the Administration addresses women's employment issues and the kinds of employment assistance offered to women in the U.S. labor force.

Communication Through Meetings and the Media

Throughout the year, the message of the Women's Bureau was shared nationwide by means of meetings with constituent groups, workshops, seminars and symposia, press releases, exhibits, feature articles, publications, and speeches by key people on the national office staff and in the 10 regional offices.

The information officer worked closely with representatives of the media, providing input and technical data for their reports. Fiscal 1986 examples include collaborative efforts with Newsweek magazine, on its special issue on working mothers, and with ABC-Closeup, on its presentation on the changing role of women in the economy. The Bureau also worked with other major media, including CBS Face the Nation and Cable News Network. Dozens of other media outlets were given assistance in reporting on women's employment issues.

In time for its 65th anniversary observance in November 1985, the Women's Bureau prepared a film spanning the history of women's employment in this country over the past 65 years. A shortened version of the film, "There's No Such Thing As Woman's Work," was being prepared for release to women's groups and other constituents.

Publications

During fiscal 1986, the Bureau distributed approximately 140,000 of its publications through the national and regional offices. These publications covered such topics as Federal laws affecting women's employment and economic status, facts on occupations, earnings, and labor force participation, and model programs which organizations can replicate. Among the most frequently requested publications were: *A Working Woman's Guide to Her Job Rights, Women and Office Automation: Issues for the Decade Ahead, The United Nations Decade for Women, 1976-1985, Job Options for Women in the 80's, A*

Woman's Guide to Apprenticeship, and assorted fact sheets. Continued interest in child care issues produced many requests for *Employers and Child Care: Establishing Services Through the Workplace*.

In November, the Bureau published *Milestones: The Women's Bureau Celebrates 65 Years of Women's Labor History*, for release at the national conference observing the agency's 65th anniversary.

Other publications issued in fiscal 1986 include: *Women and Office Automation: Issues for the Decade Ahead*, *Women, Clerical Work, and Office Automation: Issues for Research*, *Retirement Equity Act of 1984: Its Impact on Women*, three fact sheets titled *20 Facts on Women Workers*, *Women Who Maintain Families*, and *Alternative Work Patterns*, and a series of six model program guides titled *Job Training in Food Services for Immigrant, Entrant, and Refugee Women*, *The Coal Employment Project—How Women Can Make Breakthroughs into Nontraditional Industries*, *National Women's Employment and Education Project*, *Employment Programs for Rural Women*, *From Homemaking to Entrepreneurship: A Readiness Training Program*, and *Employment-Focused Programs for Adolescent Mothers*.

Publications on order included a revised edition of *A Working Woman's Guide to Her Job Rights* and a fact sheet, *Caring for Elderly Family Members*.

Office of Inspector General

During FY 1986, the Office of Inspector General (OIG) continued to focus on the detection and prevention of fraud, waste and abuse as well as on improvement in the economy and efficiency of the Department of Labor's programs and operations. The OIG completed its eighth fiscal year working in close cooperation with the Department's agencies and with the support from top management which resulted in effective audit and investigative activities. Convictions and indictments in labor racketeering investigations continued; significant cases involved pension and health benefit funds embezzlement and kickbacks.

As a result of audit work, $78.4 million in questioned costs and costs recommended for disallowance was identified in 563 reports issued on the Department's programs, grants, and contracts. In the reports resolved, there was $78.1 million in audit exceptions, of which $42.2 million was disallowed.

Audit initiated and completed significant work in several programs. Within the Employment and Training Administration (ETA), audit work centered on the Unemployment Insurance (UI) Program's Unemployment Trust Fund. Other significant audit activities included: (1) review of the Federal share of the Unemployment Compensation (UC) Program, (2) Department management reviews, (3) a long-term initiative to evaluate each Department agency's financial management system, (4) completion of the Federal Employees' Compensation Act (FECA) Level II computer development project, (5) indirect cost audits, (6) UI Experience Rating negotiations, and (7) a follow-up report on the impact of our Federal Employee/UI Crossmatch Program.

The Federal Unemployment Tax Act (FUTA) levies a Federal tax against employers to fund State and Federal administration of the unemployment insurance program. The Department of Labor administers programs funded by the FUTA taxes through the Employment and Training Administration. The IRS collects FUTA taxes and processes the FUTA tax returns. The Financial Management Service of the Department of Treasury is responsible for the administration, maintenance and investment of the Unemployment Trust Fund (UTF), the FUTA tax deposi-

tory. Our review of the Treasury Department's management in this area revealed that IRS's accounting and billing systems for FUTA activities does not assure fair and equitable charges against the UTF for services rendered. These deficiencies resulted in $24.9 million overcharged to the UTF for fiscal years 1984-86. These overcharges will be adjusted for fiscal years 1984 and 1985 as of October 31, 1986, and those related to fiscal year 1986 will be adjusted at year-end. IRS, which changed its method of costing for the collections process in response to our recommendations, estimates that the total reversal for all three fiscal years will exceed $30 million.

The agency is continuing its review of the Federal share of the Unemployment Compensation (UC) program. Of the $172 million we have recommended for disallowance because of an overstatement of charges or ineligible claimant status, $49.2 million relates to final reports and $122.8 million relates to draft reports. State agencies have already refunded about $9.1 million of unallowable costs.

The OIG completed departmental management reviews in four areas: (1) information resources management, (2) procurement, (3) Federal telecommunications system, and (4) asset management. An audit report on the Federal telecommunications system identified annual cost savings of $926,680 and a one-time savings of $162,892, totalling $1,089,572.

The OIG has undertaken a major long-term initiative to evaluate each program agency's financial management and the Department of Labor's financial management as a whole. This initiative features two interrelated efforts: (1) financial statement audits and (2) financial management systems reviews. To enable the Department to comply with new GAO and Treasury financial statement requirements and standards, our studies presented prototype financial statements for ETA and the Occupational Safety and Health Administration (OSHA), as well as prototype management reports. Concurrent with the financial reporting studies in ETA and OSHA, we are using the Control and Risk Evaluation (CARE) audit methodology, developed by GAO, to review and evaluate each agency's financial management system. These system reviews will complement the financial statement audits by assessing the management techniques used to ensure the reliability of financial and program output data. We are completing the

first phase, general risk analysis, of CARE system reviews of ETA and OSHA.

The FECA Level II development project, in which the OIG monitored the design and development of a new ADP system for FECA, terminated in a negotiated settlement with the contractor. The settlement terms resulted in significant cost recoveries, in which the contractor returned $912,845 to the Department. This negotiated settlement further resulted in a cost avoidance estimated at $63 million to $90 million. The review of the system noted problems in performance by the contractor and weaknesses in system specification which did not meet GAO standards and Federal Managers' Financial Integrity Act requirements.

Indirect cost audits reported an annual savings of approximately $640,000 due to adjustments in the indirect cost pool and its base; unallowable items were removed from the pool as well.

We continued to progress in negotiations on the resolution of the Unemployment Insurance (UI) Experience Rating audit. ETA and OIG agreed that (1) an Experience Rating Index (ERI) is needed which would rate experience in all states' UI tax systems; and (2) rating requirements must be changed.

A follow-up report on our Federal Employees/UI Crossmatch Program, in which we matched payroll information for eight participating Federal agencies against unemployment benefit payments in 14 states for the period October 1980, through October 1982, showed that as a result of this effort State Employment Security Agencies validated 966 UI overpayment cases, representing $523,239 in overpayments for seven Federal agencies. This program was instrumental in focusing Federal agencies' attention on strengthening their internal controls in order to identify, prevent and deter fraudulent UI claims, overpayments and improper charges.

Fraud and integrity investigations conducted by the Office of Investigations (OI) resulted in 521 successful prosecutions. Indictments in fraud and integrity cases totaled 809. The OIG initiated 1,338 investigations and closed 1,075. Successful prosecutions from fraud and integrity investigations brought $8,421,039 in recoveries; $4,320,473 in fines, penalties, restitutions and settlements, and $5,905,431 in cost efficiencies.

The above fraud investigations contained significant cases in UI and FECA programs, and the Employment Standard Administration's (ESA) Wage and Hour (WH) contracts. In addition, continued investigative attention given the Black Lung Program has resulted in a significant savings in funds expended for unnecessary oxygen related equipment. OIG continued to investigate ETA programs under the Job Training Partnership Act (JTPA) and the old Comprehensive Employment and Training Act (CETA), as well as to detect fraud and abuse of the alien certification process.

UI fraud cases involving fictitious employer/employee UI schemes and UI for Ex-Military Service Members (UCX) remained high-risk areas for considerable Federal Government losses. OIG continues to use the "cluster approach" in addressing single claimant fraud cases. This enabled an increased number of prosecutions because cases that are addressed individually otherwise would be under the minimum dollar threshold warranting prosecution.

The most prevalent findings in the FECA cases continued to be the submission by medical providers of false billings and claims for services not provided, along with the concealment by the recipient of earned income from employment.

Investigations conducted with the assistance of ESA's Wage and Hour Division and other law enforcement agencies focused primarily on government funded or assisted contracts. Coordinated efforts in the fiscal year resulted in 21 contractors and individuals being indicted, 17 being convicted, $895,726 being recovered, and 32 individuals and contractors debarred from bidding on future government contracts.

The OIG received and tracked 2,321 allegations of fraud, waste, mismanagement or other irregularities in Department programs, nationwide. The majority of allegations continued to pertain to the largest departmental agencies—the Employment and Training Administration and the Employment Standards Administration.

The OIG's labor racketeering investigations resulted in 56 convictions and 114 indictments of individuals. Monetary recoveries from the Office of Labor Racketeering (OLR) investigations were approximately $416,400 in court-ordered fines and $1,537,927 in court-ordered restitution to benefit plans, union members and unions. Investigative monetary findings on benefit plan-related frauds

alone amounted to $11,870,308. Sixty-six cases were opened this fiscal year and 62 investigations were closed.

During this fiscal year, the Office of Labor Racketeering continued to develop investigations with major impact on labor intensive industries. Indictments increased to 114 in FY 1986, compared to 89 in FY 1985. Although convictions declined from 67 in FY 1985 to 56 in FY 1986, the conviction rate increased to 93 percent compared to 84 percent for the previous year.

Detection of corruption in pension and welfare plans remained the highest investigative program priority and continued to receive nearly 65 percent of the OLR resources nationwide. This commitment was commensurate with the scope of identified abuse and consistent with the Secretary's goal to protect the retirement security of the American worker.

Within the program segment of labor management relations, OLR has implemented a long-range planning process to identify those labor intensive industries most vulnerable to racketeering in the form of extortion, payoffs, bribery, bid-rigging and conflicts of interest. Major investigative efforts have been initiated in the following industries: building and construction trades, garment, and waterfront. This segment accounted for approximately 25 percent of the OLR enforcement program.

The OIG executed a Memorandum of Understanding with the Federal Bureau of Investigation (FBI) governing matters of concurrent investigative interest between OLR and the FBI. This working agreement was designed to promote a more comprehensive, systematic Federal effort in the organized crime and labor racketeering arena.

ADP initiatives included the acquisition of stand-alone desktop microcomputers for OLR field offices and a computerized micrographic record and retrieval system for OLR nationwide. Recent OIG audits, using a small inventory of portable microcomputers, have demonstrated cost-reduction and productivity improvement benefits inherent in the application of ADP technology to audit procedures. OIG awarded a contract to procure portables for the Office of Audit next fiscal year.

An ethics and integrity awareness training course was presented to approximately 70 supervisors and managers in the Department. This course trained supervisors to understand their role in dealing with questions or problems of

ethics and integrity in the workplace. In addition, a pilot training course designed to meet the specialized needs of the Mine Safety and Health Administration (MSHA) was presented to 30 mine inspectors. This was the first step in establishing an MSHA-specific training course that will effectively address the most important integrity concerns in this area.

The OIG also devoted resources to pursue the initiatives of the President's Council on Integrity and Efficiency (PCIE). The Inspector General continued to chair the PCIE Investigator Training Committee and co-chaired the Computer Committee. Projects from the latter included the development of documentation guidelines for computer-assisted audits and investigations and a survey of data communications technology issues. OIG assumed responsibility for publication of the "Computer Matching Newsletter," and also participated on the PCIE Prevention, Executive Development, and Coordinating Committees.

Employees Compensation Appeals Board

The Employees' Compensation Appeals Board (ECAB) decided 2,050 cases during fiscal year 1986. The Board makes final decisions on appeals arising under the Federal Employees' Compensation Act involving work-connected injuries and diseases. Its decisions are not judicially reviewable.

The Board began fiscal 1986 with 640 pending appeals. During the year, 2,209 new appeals were received and 2,050 cases were decided, leaving 799 cases pending at the end of the year. Of the pending cases, 457 were ready for Board action; the balance were awaiting action by the parties, awaiting hearing, or a memorandum to be filed by the Office of Workers' Compensation Programs or the claimant.

The average time lapse between the receipt of the case record from the Office of Workers' Compensation Programs and its disposition by the Board in fiscal year 1986 was 2.2 months.

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Benefits Review Board

Production at the Benefits Review Board reached an all-time high in FY 1986, an unprecedented number of non-final orders were issued and the backlog of pending cases was reduced, all within the reduced budgetary and personnel resources.

While the number of dispositions to be issued in FY 1986 was originally targeted at 4,200, a delay in completion of the renovation of BRB space to accommodate the staff increase made necessary by the 1984 Amendments to the Longshore and Harbor Workers' Compensation Act (the Board's enabling statute) caused that goal to be reduced to 4,000 final dispositions. Restrictions mandated by the Gramm-Rudman-Hollings Act caused a further downward revision in our production goal to 3,600. Although the Gramm-Rudman-Hollings restrictions were not imposed until the middle of the second quarter of FY 1986, necessitating an "over correction" in order for the restrictions to be accomplished in only the third and fourth quarters, the Board reached its revised goal of 3,600 dispositions and actually disposed of 3,607 cases, an all-time high in production. In addition, the Board set a new record by issuing 7,675 non-final orders, also an all-time high.

Among the other accomplishments was a reduction of the Board's pending case backlog by 357 cases. In this regard, the Board started FY 1986 with a pending caseload of 7,318 cases and ended the fiscal year with 6,961 cases pending. While the reduction in actual numbers appears relatively small, it must be noted that this reduction was accomplished with reduced resources and limited personnel. In any event, the reduction rate was such that the goals of the Black Lung Task Force to reduce the Board's backlog to one year by the end of FY 1989 is achievable, if the rate of new appeal filings remains at or close to the levels experienced in FY 1985 and FY 1986. However, if the rate of filings during FY 1987 increases appreciably, we will monitor this aspect of the Board's operations closely and will take all available steps to minimize the effect of any such increase in order to achieve the goals of the Black Lung Task Force.

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Information Activities

The Department's fiscal year 1986 public information activities reflected the Cabinet agency's overall emphasis on seeking public and private sector cooperation.

Cooperation was viewed as essential to maintain a healthy, growing U.S. economy, enable American industries to compete effectively in world markets and achieve continued progress for American workers.

Labor and management were urged to work closely together to boost industrial productivity and improve working conditions. In addition, the Department continued to publicize its efforts to build stronger partnerships with the private sector under its employment and training, regulatory and enforcement programs.

Early in the fiscal year, Secretary Brock announced a series of major goals for the Department. Emphasis was placed, for example, on improving workers' economic status by increasing their educational, training and job opportunities; health and safety, and retirement security.

To strengthen the Department's ability to meet these goals, Secretary Brock announced a comprehensive management plan for improving the agency's effectiveness and productivity. This, too, stressed cooperation. The plan specifically called for increasing employee motivation and involvement, intradepartmental coordination, and private-sector support in the Department's activities.

Information and communication were seen as keys to encouraging public participation and support. The Department used a variety of means and opportunities to communicate information about issues, policy decisions and program initiatives to the media, the general public and special interest groups.

The Secretary and other top officials were primary spokespersons in the Department's information and education efforts, using speeches, news releases, news conferences, published articles, media interviews and other opportunities to convey information and promote interest and involvement by affected groups.

As the nation prospered in its fourth year of economic recovery, the department continued serving as the source of data about changes in producer and consumer prices, real earnings, productivity, employment, unemployment and other trends. Low inflation, coupled with the continu-

ing increase in new jobs, were highlights of the improving economic picture for most Americans.

Considerable effort was made to educate the public about certain long-term trends in the economy, the job market and the demographic makeup of the labor force. These trends have major implications for workers, employers and the nation's industrial productivity over the next few decades.

For example, special attention was focused on the need to increase worker education, training and retraining opportunities as jobs become more technical and complex, change more rapidly with advancing technology and shifting economic conditions, and require people to have more skills.

A related focus of concern was the growing adult illiteracy problem. As more young Americans are dropping out of school, others are graduating with marginal reading, writing and math skills. This is dooming millions of people to lifetimes of unemployment or underemployment. Meanwhile, the entire demographic pool of younger labor force entrants available to employers is expected to shrink over the next two decades.

While this situation eventually could help alleviate the nation's unemployment problem, it could also result in a shortage of workers adequately trained and prepared for tomorrow's jobs, hinder industrial productivity and weaken the U.S. position against growing foreign competition.

To spur concern and action on these issues, Secretary Brock and other Department officials used them as themes in many key speeches and other public statements.

In addition, the public was kept steadily informed of progress and new developments in the Department's own worker training, retraining and youth literacy initiatives under the Job Training Partnership Act and other programs.

During the year, Secretary Brock and Secretary of Education William Bennett held a joint news conference to announce their agencies' cooperation in a number of projects related to worker education and training.

By the end of the fiscal year, Department staff members across the country were actively involved in and helping to publicize community-based activities associated with Project PLUS, a national adult literacy campaign

jointly sponsored by the American Broadcasting Companies, Inc., and the Public Broadcasting Service.

Another demographic trend with growing implications for workers and employers is the rapid entry into the labor force of women, many of whom have young children and/or provide the sole source of income for their families.

Noting that women also are a valuable source of productive labor and skills, the Department stepped up its advocacy of better educational, job training and employment opportunities for women. Secretary Brock added visibility to the issue by calling for greater public recognition of emerging "work and family" concerns.

Labor and management, the Secretary said, have a joint responsibility to structure jobs, work hours, fringe benefits, day care programs and other arrangements to meet their respective needs and minimize work-family conflicts—just as labor and management cooperatively should address any other problem affecting productivity and employee well-being.

A third demographic trend highlighted during the year was the aging of America's workforce. Secretary Brock announced a special-emphasis program to deal with issues facing older Americans, noting that pension and health care programs, our expanding female work force and other policy topics affecting workers and retirees need to be examined and better coordinated as the proportion of older people in our labor force increases.

As always, the Department sought to keep an interested public informed of its regulatory and enforcement activities under Federal labor standards laws. Numerous inquiries were handled and announcements made of newsworthy events and developments.

For example, in a news conference that received nationwide media coverage, Secretary Brock announced that a comprehensive inspection of the Union Carbide Corporation's chemical plant in Institute, WV, had turned up 221 alleged job safety and health violations, resulting in a record $1.4 million in proposed penalties under the Occupational Safety and Health Act.

Wide media coverage was also given to two major regulatory proposals issued during the year—rules under a new law easing overtime pay requirements for State and local governments and modified restrictions on industrial homework.

With an estimated $1.4 trillion invested in private pension plans, the public demonstrated keen interest in the Department's frequent announcements of policymaking and litigation activities under the Employee Retirement Income Security Act.

Throughout the year, the Department worked to sharpen communications with groups affected by its policies and programs, including labor, management, women, minorities, military veterans, small business and all levels of government. Part of this effort involved increasing the quantity and quality of relevant news and feature material targeted to these groups through specialized media.

Information was one of many services the Department strived to deliver more effectively and efficiently but also played a crucial role in carrying out the agency's other tasks and objectives.

By making the American people more aware of their rights, responsibilities, opportunities and challenges, information helped equip them for the important decisions and actions necessary to assure continued progress for workers and our nation as a whole.

APPENDIX TABLES

Appropriations and Other Obligational Authority

Number of Employees on Labor Department Rolls As of October 1, 1986

Characteristics of Participants in Title IIA and III of the Job Training Partnership Act During Program Year 1985

Selected Employment Service Activities by Region and State, Through Third Quarter, Program Year 1985 (July 1, 1985 through March 31, 1986)

Benefit Data Under State Unemployment Insurance Programs, by State, for 12 Months Ending December 31, 1985

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Appropriations and Other Obligational Authority

	FISCAL YEAR 1986 AMOUNTS[1]
Federal Funds:	
Employment and Training Administration, Program Administration	65,225,000
Training and Employment Services	3,337 192,000
Community Services Employment for Older Americans	312,002,000
Federal Unemployment Benefits and Allowances	10,000,000
Grants to States for Unemployment Insurance and Employment Services	22,585,000
Advances to the Unemployment Trust Fund and Other Funds	464,785,000
Total, Employment and Training Administration	4,211,789,000
Labor Management Services	55,042,000
Employment Standards Administration	182,140,000
Special Benefits	236,657,000
Occupational Safety and Health Administration	208,692,000
Mine Safety and Health Administration	145,157,000
Bureau of Labor Statistics	151,819,000
Departmental Management	95,034,000
Office of the Inspector General	37,076,000
Special Foreign Currency	45,000
Total, Federal Funds	5,323,451,000
Trust Funds:	
Unemployment Trust Fund (ETA)	25,600,000,000
Black Lung Disability Trust Fund (ESA)	982,560,000
Special Workers' Compensation (ESA)	78,000,000
Gifts and Bequests (ETA)	10,000
Total, Trust Funds	26,660,570,000
Proprietary Receipts	(377,500,000)
Interfund Transactions	(3,555,000,000)
Total, Department of Labor Budget	28,051,521,000
Other Funding:	
Funds Appropriated to Other Agencies for Programs Administered by the Department of Labor:	
Department of Health and Human Services (Work Incentive Program)	210,540,000
Other Federal Agencies (Federal Employees Compensation Act-Injuries)	885,000,000
Other Federal Agencies (Federal Employees Compensation-Unemployment)	385,000,000
Total, Other funds	1,480,540,000
Grant Total, All funds	29,532,061,000

1/ Excludes amounts sequestered under the Balanced Budget and Emergency Deficit Control Act of 1985; includes amounts withheld pursuant to Section 515 of the Treasury-Postal Service Appropriation Act of 1985.

Number of Employees on Labor Department Rolls as of October 1, 1986

	Full-Time Permanent			Other		
	Total	D.C.	Field	Total	D.C.	Field
All Agencies	16819	6238	10581	1020	251	769
ETA	1707	771	936	33	21	12
LMS	929	378	551	19	13	6
ESA	3726	752	2974	130	30	100
OSHA	2073	372	1701	66	13	53
MSHA	2667	251	2416	58	14	44
BLS	1997	1455	542	564	60	504
SOL	711	418	293	41	32	9
ILAB	74	70	4	4	4	0
OSEC	190	140	50	4	4	0
OASAM	915	542	373	54	24	30
OIG	535	161	374	10	4	6
VES	272	29	243	3	2	1
Other	585	461	124	18	14	4
PBGC	438	438	0	16	16	0

Characteristics of Participants Who Left Titles II-A and III of the Job Training Partnership Act During Program Year 1985

Characteristics	Percent distribution Title II-A[1]	Title III[2]
Male	48	62
Female	52	38
Age:		
Under 22	44	4
22–54	54	88
55 and over	2	8
Education:		
School dropouts	26	19
Student	17	1
High school graduate	57	80
Race/Ethnic group:		
White	51	70
Black	33	19
Hispanic	12	8
Other	4	3
Limited English speaking ability	4	3
Handicapped	10	3
Unemployment insurance compensation claimant	6	54
Economically disadvantaged	93	NA.
Receiving public assistance	42	NA.

Note: Totals may not add to 100 percent due to rounding.
[1]Source: JPTA Annual Status Report, and Job Training Longitudinal Survey (JTLS).
[2]Source: JTPA Annual Status Report.
NA. = Not available.

Selected Employment Service Activities, Program Year 1985 (July 1, 1985 Through June 30, 1986)

	Total Applicants	Referred to Jobs	Job Openings Received	Ind. Placed/ Obt. Empl.
Region I (Boston)	(784,790)	(327,168)	(339,609)	(149,798)
Connecticut	249,441	79,281	76,646	40,497
Maine	141,167	50,415	NA	860
Massachusetts	220,966	113,195	169,117	66,554
New Hampshire	50,063	28,394	31,464	12,103
Rhode Island	59,554	25,840	33,569	16,932
Vermont	63,599	30,043	28,813	12,852
Region II (New York)	(1,875,114)	(409,561)	(734,694)	(308,247)
New Jersey	480,745	95,337	138,973	60,897
New York	1,169,921	272,054	569,257	224,395
Puerto Rico	211,321	36,793	23,168	22,955
Virgin Islands	13,127	5,377	3,296	NA
Region III (Philadelphia)	(1,792,295)	(573,986)	(501,180)	(298,412)
Delaware	32,289	9,250	11,775	5,858
District of Columbia	109,967	41,432	47,454	30,611
Maryland	231,929	67,825	72,119	44,815
Pennsylvania	970,104	284,717	218,998	144,700
Virginia	298,409	116,234	112,870	47,937
West Virginia	149,597	54,528	37,964	24,491
Region IV (Atlanta)	(3,823,746)	(1,634,077)	(1,485,516)	(812,630)
Alabama	448,358	173,002	123,597	81,721
Florida	788,486	381,487	452,389	186,948
Georgia	470,347	191,595	149,470	84,433
Kentucky	294,879	120,965	97,231	76,477
Mississippi	384,046	161,022	113,808	82,213
North Carolina	655,322	288,446	269,813	155,282
South Carolina	343,326	149,016	159,208	64,794
Tennessee	438,982	168,544	120,000	80,762
Region V (Chicago)	(3,932,647)	(1,080,499)	(845,281)	(695,653)
Illinois	827,674	228,374	182,007	214,569
Indiana	508,978	171,761	128,138	88,780
Michigan	722,048	158,725	136,723	112,106
Minnesota	394,232	143,484	131,757	75,864
Ohio	1,053,656	212,520	174,417	132,272
Wisconsin	426,059	165,635	92,239	72,062
Region VI (Dallas)	(2,903,197)	(1,143,413)	(893,334)	(536,412)
Arkansas	337,435	142,222	109,727	71,633
Louisiana	421,247	138,514	106,281	75,248
New Mexico	158,257	55,000	52,196	36,828
Oklahoma	394,802	103,078	111,600	58,030
Texas	1,591,456	704,599	513,530	294,673

	Total Applicants	Referred to Jobs	Job Openings Received	Ind. Placed/ Obt. Empl.
Region VII				
(Kansas City)	(1,364,006)	(548,486)	(435,074)	(271,976)
Iowa	355,619	156,620	131,609	85,560
Kansas	236,700	92,390	82,754	49,872
Missouri	636,380	234,262	158,647	100,673
Nebraska	135,307	65,214	62,064	35,871
Region VIII				
(Denver)	(874,112)	(436,676)	(411,708)	(216,876)
Colorado	260,411	109,405	106,620	54,120
Montana	143,023	62,700	66,580	30,216
North Dakota	94,632	52,580	42,919	26,144
South Dakota	105,144	59,625	58,922	29,396
Utah	188,687	107,841	95,171	52,687
Wyoming	82,215	44,525	41,496	24,313
Region IX				
(San Francisco)	(1,661,097)	(742,666)	(965,705)	(324,772)
Arizona	313,994	116,574	55,058	45,433
California	1,142,645	532,210	844,888	245,130
Guam	8,240	3,906	4,667	206
Hawaii	92,409	39,410	28,247	14,535
Nevada	103,809	50,566	32,845	19,468
Region X				
(Seattle)	(900,501)	(394,841)	(338,259)	(217,440)
Alaska	106,037	47,076	50,118	23,417
Idaho	147,286	69,412	56,685	31,712
Oregon	269,629	130,368	111,083	72,332
Washington	377,549	147,985	120,373	89,979
U.S. Total	19,911,505	7,291,373	6,950,360	3,832,216

NA = Not Available

Benefit Data Under State Unemployment Insurance Programs, by State, for 12 Months Ending December 31, 1985

	Initial claims	Average weekly insured unemployed: Number	Average weekly insured unemployed: Percent of covered employment	Total number of beneficiaries	Average weekly beneficiaries	Average weekly wage in covered employment	Average weekly benefit amount: Amount	Average weekly benefit amount: Percent average weekly wage	Duration (in weeks) all beneficiaries: Potential	Duration (in weeks) all beneficiaries: Actual	Duration (in weeks) all beneficiaries: Actual for exhaustees	Claimants exhausting benefits: Number	Claimants exhausting benefits: Percent of beneficiaries
United States	20,611,921	2,609,783	2.8	8,355,360	2,287,134	363.54	128.14	35.2	23.8	14.3	22.7	2,577,028	31.4
Alabama	420,689	42,487	3.2	167,493	35,110	318.54	97.66	30.7	22.9	10.9	20.8	42,005	23.9
Alaska	88,661	14,305	6.9	49,348	14,706	553.89	156.30	28.2	20.7	15.6	20.1	24,291	51.3
Arizona	165,427	20,686	1.7	62,226	15,322	343.02	105.29	30.7	24.8	12.9	22.0	15,726	28.1
Arkansas	250,232	27,291	3.6	95,616	21,750	294.72	108.39	36.8	23.4	11.9	22.8	22,146	23.6
California	3,084,067	389,338	3.6	1,140,020	348,136	400.07	113.01	28.2	24.1	15.9	23.0	384,109	36.2
Colorado	199,948	30,636	2.3	100,505	22,756	371.57	148.37	39.9	22.7	11.8	21.6	34,511	37.4
Connecticut	233,898	26,257	1.7	120,574	25,169	406.71	144.28	35.5	26.0	10.9	26.0	18,111	15.8
Delaware	37,249	4,452	1.6	19,148	4,034	366.34	111.77	30.5	25.9	11.0	25.9	2,706	15.5
Dist. of Columbia	37,773	8,156	2.0	21,263	7,482	447.79	147.06	32.8	21.8	18.4	23.3	10,434	50.1
Florida	409,670	56,569	1.3	192,386	43,914	321.37	112.27	34.9	20.4	11.9	18.0	67,267	35.7
Georgia	449,633	41,965	1.7	216,816	39,471	339.33	105.18	31.0	21.3	9.5	19.0	54,035	23.7
Hawaii	68,678	9,874	2.5	30,119	8,487	317.99	140.83	44.3	26.0	14.7	26.0	8,419	24.9
Idaho	120,557	13,985	4.4	40,739	11,038	309.06	128.01	41.4	18.9	14.1	16.2	18,186	40.3
Illinois	830,802	144,582	3.2	385,145	129,760	393.95	138.35	35.1	26.0	17.6	26.0	147,470	38.7
Indiana	423,082	47,418	2.3	163,072	39,455	353.13	92.81	26.3	21.5	12.6	19.6	58,058	33.7
Iowa	210,162	31,208	3.1	97,124	26,852	306.57	132.38	43.2	22.7	14.4	21.2	32,174	32.9
Kansas	171,925	22,432	2.4	80,456	19,620	330.11	139.93	42.4	17.2	12.7	16.7	25,959	34.3
Kentucky	300,709	36,219	3.1	122,322	33,647	322.20	104.53	32.4	26.0	14.4	26.0	30,478	25.2
Louisiana	394,123	66,029	4.4	178,475	61,062	347.53	150.65	43.3	23.5	17.9	23.8	82,497	49.2
Maine	150,352	14,781	3.4	36,950	17,108	293.38	117.10	39.9	22.7	17.1	21.1	21,325	57.0
Maryland	261,685	35,966	2.1	123,153	30,860	354.48	131.67	37.1	26.0	13.1	26.0	27,896	23.9

Benefit Data Under State Unemployment Insurance Programs, by State, for 12 Months Ending December 31, 1985—cont.

Massachusetts	473,394	64,717	2.3	205,916	57,676	374.99	141.78	37.8	27.2	14.6	25.7	48,567	24.4
Michigan	821,064	103,378	3.1	360,685	91,046	425.13	143.45	33.7	23.1	13.3	19.7	112,535	31.2
Minnesota	286,488	45,609	2.6	148,181	40,973	359.50	155.27	43.2	23.0	14.4	19.9	49,217	35.8
Mississippi	254,684	28,802	3.6	88,089	22,052	281.83	91.16	32.3	23.8	13.1	22.4	26,382	28.6
Missouri	470,736	48,360	2.5	165,854	39,297	348.10	101.36	29.1	22.3	12.4	19.7	44,489	27.0
Montana	69,513	10,188	4.0	32,866	8,682	298.78	121.53	40.7	19.6	13.8	18.7	14,026	40.4
Nebraska	88,170	13,855	2.3	50,074	11,800	296.17	107.74	36.3	22.2	12.3	17.5	15,376	34.3
Nevada	86,589	11,517	2.7	41,175	10,515	345.85	130.48	37.7	21.5	13.3	22.2	11,160	28.0
New Hampshire	55,135	4,280	1.0	28,686	3,317	324.81	105.69	32.5	26.0	6.0	26.0	981	3.5
New Jersey	562,542	93,705	2.9	298,873	89,975	402.25	147.04	36.6	23.8	15.7	22.4	115,706	39.0
New Mexico	75,160	13,009	2.8	34,099	10,724	318.75	114.28	35.9	25.8	16.4	25.3	12,257	36.1
New York	1,237,386	205,267	2.7	556,615	186,387	419.37	130.20	31.0	26.0	17.5	26.0	207,177	36.7
North Carolina	939,321	57,322	2.2	262,089	45,841	309.01	110.93	35.9	22.9	9.1	20.4	41,920	14.5
North Dakota	49,094	7,181	3.2	22,439	6,381	295.40	142.57	48.3	21.4	14.8	19.2	9,137	40.8
Ohio	836,046	122,361	2.9	353,492	100,304	370.99	146.12	39.4	25.5	14.8	25.0	102,895	30.1
Oklahoma	194,147	26,684	2.4	84,030	23,300	343.87	141.78	41.2	23.1	14.5	22.3	28,226	34.8
Oregon	359,261	43,519	4.5	134,764	37,410	338.74	134.88	39.8	25.6	14.5	24.8	35,916	28.1
Pennsylvania	1,446,721	175,781	3.9	521,289	155,382	354.49	147.46	41.6	25.8	15.6	25.7	137,556	26.3
Puerto Rico	316,080	47,775	6.8	76,515	35,117	198.06	70.07	35.4	20.0	23.3	20.0	30,185	54.5
Rhode Island	129,115	14,672	3.5	48,846	12,833	319.92	122.03	38.1	23.0	13.7	20.6	12,065	25.0
South Carolina	469,006	34,148	2.8	136,942	28,402	301.90	99.78	33.1	24.2	10.8	22.8	31,342	20.9
South Dakota	32,610	3,352	1.5	12,300	2,584	261.73	105.68	40.4	24.9	11.0	24.4	1,446	12.5
Tennessee	525,756	46,059	2.6	171,457	39,129	320.11	90.32	28.2	22.8	11.9	21.0	41,936	24.7
Texas	778,663	94,216	1.5	350,955	89,089	373.82	147.54	39.5	20.6	13.3	19.6	123,787	38.6
Utah	108,531	12,790	2.3	48,791	11,116	329.30	147.33	44.7	20.0	11.9	19.1	15,169	32.6
Vermont	42,325	6,251	2.9	20,916	5,472	304.88	117.72	38.6	26.0	13.7	26.0	3,398	16.2
Virginia	371,741	25,464	1.1	141,425	23,969	333.86	120.24	36.0	21.6	8.8	19.2	26,156	17.9
Virgin Islands	4,796	1,026	2.8	2,596	968	276.09	120.33	43.6	17.7	19.5	21.5	1,637	52.6
Washington	548,398	68,643	4.3	198,946	61,571	359.24	135.09	37.6	26.6	16.2	22.3	56,691	29.3
West Virginia	113,245	25,752	4.6	73,098	22,765	342.78	132.87	38.8	27.1	16.3	27.8	20,813	25.7
Wisconsin	516,764	64,822	3.4	223,274	58,073	336.57	141.29	42.0	24.0	13.6	21.9	66,375	28.8
Wyoming	40,118	4,639	2.4	17,133	4,242	361.16	152.24	42.2	22.2	12.9	20.2	4,702	29.8

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